(29,038)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 488.

CHARLES L. CRAIG, PETITIONER,

vs.

WILLIAM C. HECHT, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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Petition for an Appeal. 1

Before—The Hon. MARTIN T. MANTON, United States Circuit Judge.

In the Matter
of
CHARLES L. CRAIG,
Petitioner.

NOW COMES Thomas D. McCarthy, United 2
States Marshal for the Southern District of New York by his attorney, William Hayward, United States Attorney for the Southern District of New York, feeling aggrieved by the final order made and entered herein by the Honorable Martin T. Manton, Circuit Judge of the United States, on the 29th of April, 1921, sustaining the writ of habeas corpus heretofore sued out in behalf of Charles L. Craig, petitioner, and discharging the said Charles L. Craig from the custody of the United States Marshal for the Southern District of New York, and petitions this Court for an order allow- 3
ing him to prosecute an appeal from the said final order to the United States Circuit Court of Appeals for the Second Circuit, and your petitioner will ever pray.

Dated, New York, N. Y., July 25, 1921.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Petitioner.

4 **Assignment of Errors.**

In the Matter
of
CHARLES L. CRAIG,
Petitioner.

NOW COMES Thomas D. McCarthy, respondent herein, by William Hayward, United States At-
5 torney, and in connection with his petition for an appeal says that in the record of proceedings and final order made and entered herein, error has intervened to his prejudice, to wit:

I. The Circuit Judge erred in signing and granting the paper called the writ of habeas corpus herein because the said Circuit Judge had no power or jurisdiction to grant or sign the same.

II. The said Judge erred in denying the motion made by respondent to dismiss the proceeding upon the ground that the said Circuit Judge of the United
6 States had no jurisdiction or power to grant or issue a writ of habeas corpus or discharge on a writ of habeas corpus.

III. The said Judge erred in denying the motion made by respondent to vacate and quash the paper called the writ of habeas corpus.

IV. The said Judge erred in denying the motion made by appellant to dismiss the writ and proceeding herein upon the pleadings, that is upon the petition of Charles L. Craig for writ of habeas corpus, the return thereto and the traverse of the said return.

V. The said Judge erred in overruling the objection made by appellant to the offer in evidence of Craig's exhibits one and two consisting of testimony taken in the trial of the alleged contempt and in admitting such evidence over appellant's objection and exception.

VI. The said Judge erred in overruling the objection made by appellant to the offer in evidence of the order designated by Honorable Martin T. Manton to hold the District Court and in admitting such order over appellant's objection and exception.

VII. The said Judge erred in making the order sustaining the writ of habeas corpus herein and discharging the said Charles L. Craig from the custody of the United States Marshal for the Southern District of New York.

WHEREFORE your petitioner prays that the said final order sustaining the writ of habeas corpus herein and discharging said Charles L. Craig from the custody of the United States Marshal for the Southern District of New York be reversed and that the said Charles L. Craig be remanded to the custody of the United States Marshal for the Southern District of New York to serve the sentence heretofore imposed upon him by the judgment of the Court entered herein on February 24, 1921.

Dated, New York, July 25, 1921.

WILLIAM HAYWARD,
United States Attorney for the
Southern District of New York,
Attorney for Petitioner-Appellant.

10 **Order Allowing Appeal.**

In the Matter
of
CHARLES L. CRAIG,
Petitioner.

On reading the petition of Thomas D. McCarthy, for the allowance of an appeal from the order made
11 and entered herein on the 29th day of April, 1921, sustaining the writ of habeas corpus heretofore issued in behalf of Charles L. Craig and discharging the said Charles L. Craig from the custody of the said Thomas D. McCarthy, United States Marshal for the Southern District of New York, it is

ORDERED that an appeal be and the same hereby is allowed to the said Thomas D. McCarthy from the said order as prayed for in the said petition

AND IT IS FURTHER ORDERED that the petitioner, Thomas D. McCarthy, shall have ninety
12 days within which to submit and file a statement of the evidence or bill of exceptions.

AND IT IS FURTHER ORDERED that the time within which the said petitioner shall file his record in the Circuit Court of Appeals for the Second Circuit of New York be and the same is hereby extended to the 25th day of October, 1921.

C. M. HOUGH,
U. S. Circuit Judge.

Citation.

To CHARLES L. CRAIG, Appellee:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Second Circuit to be holden at the United States Court House and Post Office Building in the City of New York, Southern District of New York, on the 25th day of August, 1921, pursuant to an order allowing an appeal filed in the Clerk's office in the District Court of the United States for the Southern District of New York, wherein Thomas D. McCarthy, United States Marshal for the Southern District of New York is the appellant, and you are the appellee, to show cause if any there be why the said final order of the Honorable Martin T. Manton, Circuit Judge of the United States in said order mentioned should not be corrected and why speedy justice should not be done in that behalf.

GIVEN UNDER MY HAND at Hartford, Vermont, this 27th day of July, in the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the United States, the one hundred and forty-fifth.

C. M. HOUGH,
Circuit Judge of the United States.

Appellee's Appearance.

The appellee appeared specially on this appeal, giving notice in writing that he did not waive any of his rights, and did not intend thereby to submit to the jurisdiction of the United States Circuit Court of Appeals for the Second Circuit, and that he objected to the jurisdiction of said Circuit Court of Appeals herein, and to the jurisdiction and power of the Circuit Judge, who allowed the appeal and signed the appeal, to do so.

16 **Order Sustaining Writ of Habeas Corpus.**

Before—Hon. MARTIN T. MANTON, United States Circuit Judge.

In the Matter
of
the Application of
CHARLES L. CRAIG.

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Application for discharge on a writ of habeas corpus.

At the time referred to herein, the petitioner was the Comptroller of the City of New York, duly qualified and serving as such. He was also a member of its Board of Estimate. Heretofore, the Brooklyn Rapid Transit Company, the New York Municipal Railway Corporation, the New York Consolidated Railway Company and the New York City Railway Company, all operating street railways in the City of New York, found themselves in
18 financial difficulties and receivers in equity were appointed by District Judge Mayer. The Interborough Consolidated Corporation, also a railway corporation, was declared a bankrupt and a receiver of its assets was appointed. On January 15, 1919, the City of New York, pursuant to a resolution of the Board of Estimate and Apportionment, through its Corporation Counsel, applied to the District Court for the appointment of a co-receiver in the Brooklyn Rapid Transit Cmpany suit. It was sought to have the Comptroller appointed receiver. The intention was that he would serve without

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compensation and thus look after the interests of the City of New York. The claim was that the City was interested in representing its citizens as well as protecting its rights under the various franchises granted to the Railways Corporations. The Court denied the application for the appointment of a co-receiver. This denial was upon the merits, but the opinion stated that it was "without prejudice to its renewal at such time as counsel may be advised." No further application for the appointment of a co-receiver was made before the petitioner wrote and sent the letter which is the subject of 20
the charge for contempt herein. The controversy between the officials of the City and those who had charge of the affairs of the railway companies, was very spirited. An application was made before the Board of Estimate and Apportionment for an increase in fare and this gave rise to hostility in the controversy.

Between the time of the appointment of receivers and the 1st of October 1919, expert accountants appointed by the Court, made an examination of the books and made a report as to the financial condition of the company and suggestions were made as 21
to the requirements of the company. Undoubtedly, this resulted in the application for an increase in fare.

Mr. Louis Nixon was the Public Service Commissioner for the First District of the State of New York. As representative of this Commission, and under the terms of the New York Statute, he was an interested party in the litigation. On October 1, 1919, Mr. Nixon called for a conference to be held in the City of New York on October 6th following, for the purpose of discussing the financial and physical condition of the traction lines of the City

22 of New York, including The Brooklyn Rapid Transit Company. He invited the Officials of the City of New York, including the petitioner, to this conference. On October 6th, 1919, the petitioner wrote and caused to be sent, the following letter:

"October 6, 1919.

"Hon. Lewis Nixon,
"Public Service Commissioner.

"Dear Sir:

23 "Replying to your letter of October 1st:

"Apparently without inquiry and without information, you have fixed the time for the proposed conference upon a date which, if observed, would require the members of the Finance and Budget Committee of the Board of Estimate and Apportionment (compromising the entire Board), to drop the preparation of the largest budget in the history of New York City, in which work, as you could easily have ascertained, they have been for some time and must continue to be engaged in daily sessions
24 from early to late.

"In your letter you say:

"'It may be necessary to review figures and examine leases and agreements that will consume time.'

"Before any such conference can be seriously considered, and as an evidence of good faith on the part of those acting by and under the authority of United States District Judge Mayer, there must be a reversal of the policy for which Judge Mayer is responsible, of denying to myself and other members of the

Board of Estimate and Apportionment any access to original sources of information concerning the property and affairs of these various public utility corporations holding franchises to operate in the streets of New York.

"When the applications were made to Judge Mayer in the 'friendly' proceedings instituted by those interested in these corporations for the appointment of a receiver of their own liking, if not of their own selection, the Corporation Counsel of the City of New York acting under instructions from the Board of Estimate and Apportionment given at my instance, urged upon Judge Mayer that he appoint an additional or co-receiver acceptable to the Board of Estimate and Apportionment, to see that the facts and conditions of the corporations involved were fairly and fully presented to the United States District Court in the course of the receivership, so that any orders or decrees that might be made by the Court would be fair and just to the City of New York, and the members of the Board of Estimate and Apportionment might be accurately informed with respect thereto in order that any action deemed necessary by the City might be taken.

"As you must be aware, it is a very common thing in large receiverships to appoint additional receivers, particularly where there are varied and conflicting interests; and I have never been able to understand why in a matter of great public concern such as this, Judge Mayer set himself against it. It was clearly understood that conditions were certain to develop in these receiverships where

the responsible authorities would be urged to take action which no honest or intelligent man could be expected to consider without the most exact and complete information upon the entire subject. Judge Mayer refused to grant any of the relief sought by the City. He not only denied the relief, but he made orders which preclude any application being made by the Municipal authorities to any other Court or Judge for any right of examination into the affairs or conditions of these corporations seeking Municipal aid and favor.

"Truth is the mightiest weapon in every controversy. The orders of Judge Mayer deny to the Municipal authorities the opportunity to ascertain the truth.

The franchises and rights enjoyed by these corporations were mostly all procured many years ago when corrupt political rings were in control of public affairs in the darkest scandals of Municipal history, both in the old City of New York and in the City of Brooklyn prior to consolidation, are those in relation to such grants. The affairs of the franchise holding corporations have been in the hands of the boldest and most unscrupulous manipulators engaged in the exploitation of the rights obtained from corrupt political rings. Up to the present moment, they have defied every power that has sought to open up the books and original records for search and examination in the public interest. They will open and open wide without any reservations or restrictions before there will be any conference so far as I am concerned.

"It seems to me a monstrous thing that an order of a Federal Judge in a Court of Equity should stand between the public and the truth under such circumstances. Such an order is hostile to every interest of the City of New York in these controversies. Its operation and effect is to disarm the Municipal authorities, to deny them the most effective instrument of redress, and to force them into a contest with corporate powers entrenched in darkness and concealment. 31

"The responsibility for the turmoil, delay and dissatisfaction that has followed upon the orders of Judge Mayer, denying to the City of New York any representation in these receiverships, rests upon those who procure and are protected by such orders. 32

"As a first and preliminary evidence of good faith, those who desire such a conference and a reasonable solution of existing complications, should procure the entry of orders by Judge Mayer putting the City of New York on an equal footing with the private interests active in the receiverships. A refusal to do this can but prolong and embitter the controversy; and it will not in the end procure any advantage whatever to the traction interests. 33

"Yours very truly,

"CHARLES L. CRAIG,
"Comptroller."

The sending of this letter resulted in an information being filed charging the petitioner, as a defendant, with criminal contempt under §268 of the Judicial Code. In the information, it was charged

34 that he caused the publication of the letter not only by sending it to the Public Service Commission, but also by sending it to various newspapers published within the District. The information charges that the following statements in the letter are false:

FIRST.—The statement that the Court was responsible for a policy of denying to the defendant and other members of the Board of Estimate and Apportionment of the City of New York, any access to original sources of information concerning
35 the property and affairs of the various public utility corporations in the hands of the receivers appointed by the Court.

SECOND.—That it is stated in the letter that the Court made orders which precluded any application being made by the authorities of the City of New York to any other Court or Judge for any right of examination into the affairs or conditions of the said public utilities corporations, whereas in truth and in fact, the Court never made any such order and, on the contrary, expressly ordered
36 and directed that there should be given to the authorities of the City of New York every opportunity and facility for making such examination.

THIRD.—That it is stated in the letter that orders of the court denied to the authorities of the City of New York the opportunity to ascertain The truth, whereas in truth and in fact the court never made any such orders and has never made any orders that had such an effect.

FOURTH.—That the letter states that an order of the court stands between the public and the truth, whereas in truth and in fact no such order

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was made. That in point of fact, the court directed every facility be afforded to the public officials and citizens associations to satisfy themselves in respect to the financial and other conditions relative to the corporations in charge of the Receivers.

The charge is that the petitioner wilfully, knowingly and unlawfully and contemptuously made these statements. It is alleged that the publication was calculated and intended by the petitioner to influence the court in the consideration of the suit and proceedings then pending. Further, 38
that the purpose was to intimidate the court in the exercise of its lawful function and to force and compel it to decide applications and questions in issue in accordance with the views and wishes of the petitioner. That it was written for the purpose of inciting public ridicule, scorn and condemnation if its decisions were contrary to or at variance with the views and wishes of the defendant. That it tended to obstruct and impede the administration of justice in said suits and proceedings.

A demurrer was interposed to this information 39
alleging various grounds why it was insufficient. This was overruled. The petitioner was then held to answer in contempt before Judge Mayer. A trial was commenced May 10, 1920, and concluded on June 10, 1920, with decision reserved.

The petitioner was a witness in his own behalf. He gave testimony as to his intention and purposes in writing the letter referred to. He said the letter from Commissioner Nixon came to him on the morning of October 6th. The letter was one of the many things he had to attend to on that morning. It was written in considerable haste and the

40 writer's purpose was to "get into the mind of Nixon the necessity for that kind of cooperation resulting in the public authorities being on an equal footing with those representing the traction interests."

He said it was physically impossible for him to have attended the conference on October 6th. He didn't expect the Commissioner to read the letter at the conference and the letter was not intended for anyone else but the Public Service Commissioner. It is explained by him that the letter
41 reached the public press through a usual routine of giving out letters for publication which prevailed in the Comptroller's office. This was done through his secretary who is an appointee of and paid by the City. He further testified as to what he intended by the language employed in his letter. He said that what he meant by "original sources" was that letters and documents of the railway companies were kept in their archives and he meant by "denying" original sources, inability to have "full and unrestricted access with power to compel any subordinate to produce or dig up whatever it
42 might be, or be suspected of being, all of the facts that relate to these companies," that anything that cut us short of that was a denial of access to the original sources; and that the very purpose of the application that had been made to the United States District Court for the appointment of a co-receiver was to have some one who was in a position to bring about these disclosures, and the necessary effect of the order denying that application was to deny to the municipal authorities in question that kind of access to the original sources.

He stated how it was important to the financial interest of The City of New York and to its citi-

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zens, to have its officials well informed of the matters pertaining to the railroad company's affairs. That the most feasible and practicable way to this end was that a co-receiver be appointed who, in some way, would be representative of The City. The petitioner is a lawyer and his testimony indicates that he had at the time considerable information concerning the railroad company's affairs and its relation to The City in connection with the franchise obligation. He denied that he gave publicity to the letter other than sending it to the Commissioner. He also denied that at any time 44
he intended to convey the meaning that the District Judge had, in point of fact, denied access to original papers, except in so far as such denial might flow from refusal to appoint him co-receiver.

On February 24, 1921, the Court adjudged the petitioner guilty and sentenced him to serve a term of six months in the Essex County prison in the State of New Jersey. The petitioner in the meantime continued to perform his official duties as Comptroller. His term will not expire until December 31, 1921.

45

FRANCIS G. CAFFEY, Esq.,
United States Attorney.

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of Counsel.

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MANTON, Circuit Judge.:

The power of a Circuit Judge to issue a writ of *habeas corpus* is questioned by a motion to dismiss. I have held heretofore that a Circuit Judge has such power (In re David Lamar, N. Y. Law Journal, April 4, 1921). Nothing has been submitted in this proceeding which causes me to change the views there expressed. Further, at the time of the issuance of this writ, the Circuit Judge sitting, was by assignment empowered to consider matters
47 of original jurisdiction. The application to dismiss the writ for want of authority to issue the same is denied.

A writ of *habeas corpus* cannot be made to perform the office of a writ of error. Nor can it be invoked to review an erroneous judgment of a Court of competent jurisdiction. It challenges the jurisdiction of the Court (In re Debbs, 158 U. S., 564; Ex parte Yarbrough, 110 U. S., 651; Ex parte Watkins, 28 U. S., 193).

In a contempt proceeding, it may be available to relieve a prisoner from the restraint imposed if
48 the judgment is void on the ground that the Court was without the power to make it. But the usual objection to the remedy sought by the medium of *habeas corpus* is that there is a regular judgment of conviction which cannot be questioned collaterly. There are exceptions to this rule which have been recognized (Ex parte Lange, 18 Wall., 163; Ex parte Siebold, 100 U. S., 371).

If the Court which renders a judgment has not jurisdiction to render it, either because the proceedings or the law under which they are taken are unconstitutional, or for any other reason, the judgment is void and may be questioned col-

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laterally. The defendant, who is imprisoned under and by virtue of such a judgment, may be discharged from custody on *habeas corpus* (In re Hans Nielson, 131 U. S., 176). There the Court said:

> "In the present case, it is true, the ground for the habeas corpus was, not the invalidity of an act of Congress under which the defendant was indicted, but a second prosecution and trial for the same offense, contrary to an express provision of the Constitution. In other 50
> words, a constitutional immunity of the defendant was violated by the second trial and judgment. It is difficult to see why a conviction and punishment under an unconstitutional law is more violative of a person's constitutional rights, than an unconstitutional conviction and punishment under a valid law. In the first case, it is true, the Court has no authority to take cognizance of the case; but, in the other, it has no authority to render judgment against the defendant" (page 183).

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In Ex Parte Lange, supra, the Court had authority to hear and determine the case. But the Supreme Court held it had no authority to give the judgment it did. As was said in the Nielson case, supra:

> "He was protected by a constitutional provision securing to him a fundamental right. It was not a case of mere error in law, but a case of denying to a person a constitutional right."

52 So where there is a denial or invasion of a constitutional right, the prisoner may be discharged on a *habeas corpus*.

Therefore the determining inquiries are:

(a) Had the District Judge jurisdiction of the person and subject matter?

(b) Was the sentence imposed within its power?

The Judicial Code (§268, 36 Stat., 1163),
53 provides:

> "The said Courts (United States Court) shall have power * * * to punish, by fine or imprisonment, at the discretion of the Court, contempts of their authority; Provided, That such power to punish for contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice. * * *"

In Henry vs. Henkel (235 U. S., 219), it is point-
54 ed out that there were five exceptions to the rule that there can be no review on a *habeas corpus* of a sentence which can be reviewed on appeal or by a writ of error. One of the five exceptions is where the judgment or order entered under which he is held is a nullity because in excess of the power of the Court.

An example of this exception was recently before the Supreme Court in Ex Parte Hudgings (249 U. S., 378). There on a rule to show cause, a petition of *habeas corpus* seeking the discharge of the petitioner from custody under a commitment for con-

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tempt was filed. The grounds for discharge were that the Court had exceeded its jurisdiction by punishing as a contempt an act which it had no power to so punish, and that even if the act punished was susceptible as being treated as a contempt, the action of the Court was arbitrary, beyond the limits of any discretion possessed and violative of due process of law under the Fifth Amendment. The Court said:

> "The duty to consider the case arises from the permission to file and therefore prima facie 56
> implies that it is of such a character as to be an exception to the rule of procedure, that other available sources of judicial power may not be passed by for the purpose of obtaining relief by resort to the original jurisdiction of this Court, Ex parte Royal, 117 U. S., 254; Riggins vs. U. S., 199 U. S., 547; Glasgow vs. Moyer, 225 U. S., 420, 428; Johnson vs. Hoy, 227 U. S., 245; Jones vs. Perkins, 245 U. S., 390; Re Mirzen, 119 U. S., 584; Re Huntington, 137 U. S., 63. Whether, however, definitely the case is of such exceptional character 57
> must depend upon an analysis of the merits, which we now proceed to make upon the petition, the return, argument for the petitioner, suggestions by the United States, a statement by the Judge, and a transcript of the stenographer's notes showing what transpired in the court below, made a part of the argument of the petitioner and in substance conceded by all parties to be the record."

In the case at bar there is submitted the petition alleging, among other things, that the judg-

58 ment under which the petitioner is held, is a nullity because in excess of the power of the Court and becasue of the arbitrary action of the Court beyond the limits of any discretion possessed. The proceedings are sought to be justified by the return which is filed and the testimony taken on the hearing before Judge Mayer is made a part thereof.

It is argued on behalf of the petitioner (a) that there is no contempt either in substance or in the language of the letter of October 6th and (b) that at the time the letter was written, the subject mat-
59 ter of the criticism was not pending *sub judice.*

In the Hudgings case (supra) a witness testified who was declared by the district judge to be committing perjury. The Judge considered him in contempt of court because of his continuous refusal to recognize writings shown to him, the signature of which he said he could not identify because he had no recollection of having seen the signatory sign. The District Judge because of the peculiar circumstances of the case, thought the contrary and held that the witness was testifying falsely and that his refusal was obstructing the course
60 of justice in the presence of the Court. The Supreme Court discharged the prisoner and said:

> "Existing within the limits of and sanctioned by the Constitution, the power to punish for contempt committed in the presence of the Court is not controlled by the limitations of the Constitution as to modes of accusation and methods of trial generally safeguarding the rights of the citizen. This, however, expresses no purpose to exempt judicial authority from constitutional limitations, since its great and only purpose is to secure judicial authority

from construction in the performance of its duties to the end that means appropriate for the preservation and enforcement of the Constitution may be secured. Toledo Newspaper Co. vs. United States, 247 U. S., 402; Marshall vs. Gordon, 243 U. S., 521.

"An obstruction to the performance of judicial duty resulting from an act done in the presence of the Court is, then, the characteristic upon which the power to punish for contempt must rest. This being true, it follows that the presence of that element must clearly 62
be shown in every case where the power to punish for contempt is exerted—a principle which, applied to the subject in hand, exacts that in order to punish perjury in the presence of the Court as a contempt there must be added to the essential elements of perjury under the general law the further element of obstruction to the Court in the performance of its duty * * *. But the mistake is, we think, evident, since it either overlooks or misconceives the essential characteristic of the obstructive tendency underlying the contempt 63
power, or mistakenly attributes a necessarily inherent obstructive effect to false swearing * * *.

"Testing the power to make the commitment which is under consideration in this case by the principles thus stated, we are of opinion that the commitment was void for excess of power—a conclusion irresistibly following from the fact that the punishment was imposed for the supposed perjury alone without reference to any circumstance or condition giving to it an obstructive effect."

64 The argument of the petitioner is that there was an excess of power exercised by the District Judge. That the conviction for contempt is, therefore, a nullity. He contends among other things (1) that the writing and sending of the letter does not tend to obstruct the administration of justice; (2) that at the time the letter was sent the application for the appointment of a co-receiver had been disposed of and, therefore, there was not pending before the Court a proceeding which the letter could affect by obstructing the administration of justice.

65 If either of these contentions be sound, there was an excess of power exercised in the action of the district judge and the petitioner is entitled to his discharge on this writ (Ex Parte Royall, 117 U. S., 241; Ex Parte Lange, 85 U. S., 163; New York vs. Eno, 155 U. S., 89; In re Loney, 134 U. S., 372; Ex Parte Siebold, 100 U. S., 371).

He may be discharged if on inquiry raised by the writ, it is found that the Court "has transcended its powers" (Ex Parte Parks, 93 U. S., 18).

In Ex Parte Lange (85 U. S., 163), Justice Miller said:

66

> "Disclaiming any assertion of a general power of review over the judgments of the inferior courts in criminal cases, by the use of the writ of habeas corpus or otherwise, we proceed to examine the case as disclosed by the record of the Circuit Court and the return of the marshal, in whose custody the prisoner is found, to ascertain whether it shows that the court below had any power to render the judgment by which the prisoner is held" (page 166)
>
> "There is no more sacred duty of a court than, in a case properly before it, to maintain

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unimpaired those securities for the personal rights of the individual which have received for ages the sanction of the jurist and the statesman; and in such cases no narrow or illiberal construction should be given to the words of the fundamental law in which they are embodied. Without straining either the Constitution of the United States, or the well-settled principles of the common law, we have come to the conclusion that the sentence of the Circuit Court under which the petitioner is held a prisoner was pronounced without authority, 68 and he should therefore be discharged" (page 178).

In Bacon's Abridgment Habeas Corpus, B10, the rule is stated:

> "if the commitment be against the law, as being made by one who had no jurisdiction of the cause, or for a matter for which by law no man ought to be punished, the courts are to discharge."

In Ex Parte Siebold (100 U. S., 371), the 69 Supreme Court approved the foregoing quotation and said:

> "The latter part of this rule, when applied to imprisonment under conviction and sentence, is confined to cases of clear and manifest want of criminality in the matter charged, such as in effect to render the proceedings void."

The Court must act judicial in all things and cannot transcend the power conferred by law, and when the Court does so in imposing the sentence,

70 not merely is an error committed, but the judgment is absolutely void (Bailey on Habeas Corpus, §50).

In Ex Parte Parks (93 U. S. at 22), Justice Bradley said:

> "From this review of the law it is apparent therefore, as before suggested, that in a case like the present, where the prisoner is in execution upon a conviction, the writ ought not to be issued, or, if issued, the prisoner should at
> 71 once be remanded, if the court below had jurisdiction of the offense, and did not act beyond the powers conferred upon it. The court will look into the proceedings so far as to determine this question. If it finds that the court below has transcended its powers, it will grant the writ and discharge the prisoner, even after judgment."

From this record, it is evident that if any contempt was committed, it was a constructive contempt as distinguished from direct contempt. The district judge in his opinion fixes responsibility of
72 guilt upon that portion of the letter written which contains a false charge that the "judge was responsible for a policy of denying to the writter and other members of the Board of Estimate any access to the source of original information concerning the property and affairs of the company." He held this to be a contempt of court within §268 of the Judicial Code, as misbehavior so near the court as to obstruct the administration of justice.

The findings of fact having any evidence to support them are binding upon an application such as this. The objectionable language of the letter is

referred to in the Court's opinion (United States vs. Craig, 266 Fed., 230):

> "Before any such conference can be seriously considered, and as an evidence of good fatih on the part of those acting by and under the authority of United States District Judge Mayer, there must be a reversal of the policy for which Judge Mayer is responsible of denying to myself and other members of the Board of Estimate and Apportionment any access to original sources of information concerning the property and affairs of these various public utility corporations holding franchises to operate in the streets of New York."

It will be observed that the entire letter refers to the denial of the application to appoint a co-receiver. The purport of the letter taken as a whole, is a criticism of the district judge who denied the application. If the Comptroller were appointed co-receiver, he would have the access he sought as a matter of right. The finding of the district judge is that he had it as a matter of favor. Therefore, it is concluded that the statement of the denial of access is false. The district judge says in his opinion (page 231):

> "The right to criticize the correctness of the decisions of courts and judges has always existed under our form of government, and must continue to exist, not merely as a right possessed by the individual, but as a safeguard to our institutions. Such criticism often invites valuable discussion and deliberation, and not infrequently results in correcting error.

76 But such right must not be confused with 'the misbehavior * * * so near' the presence of the court 'as to obstruct the administration of justice.'"

This quotation well expresses the rule for guidance in the determination of a charge of contempt under the statute. A criminal contempt is conduct that is directed against the dignity and authority of the Court. It is an offense against organized society. Although it may arise in the course of
77 private litigation, it is not a part of the litigation but creates an issue between the public and accused. In determining whether the language used was or was not a contempt, regard must be had not merely to the very words used, but to the surrounding circumstances in connection with which they were used. The tone and the emphasis must be considered. The determination as to whether a contempt has been committed, does not depend upon the intention of the offending party, but on the act done. Such is the rule in cases of direct contempt, But in constructive contempt,
78 such as is charged here, where the language used is not *per se* libelous, but is fully capable of innocent meaning, the intention of the offending party is a factor and may control. The rule is now well settled that it is a contempt to issue a publication which is calculated to prejudice or prevent fair and impartial action in a cause of judicial investigation then pending. It is as much a contempt as if one sought to influence judicial action by threats or other form of intimidation which reflect on the Court or which tends to corrupt or embarrass the due administration of justice. (Toledo Newspaper case, supra.) But publications made

in good faith and couched in respectful language are not contemptuous. So, where the publication complained of can have no tendency to prejudice the cause, the publisher may not be found guilty of contempt. To vindicate the dignity of the Court in compelling respect and obedience, a judge may best demonstrate his title to respect by keeping within the confines of judicial obligation and not reaching out beyond his powers. To visit punishment unjustly upon another official who, acting within the limits of what he conceives to be his duty, and who attempts, whether inadvisedly or otherwise, to secure some means of keeping his employer (a municipality) advised by right of access, rather than the favor of access, to papers and information concerning the railroad properties, is clearly an excess of the power possessed.

There is no divinity about the office or duties of a judge which makes him free from criticism. The statute requires a misbehavior which causes an obstruction of the administration of justice. The Federal Constitution guarantees the right to every person to freely speak, write and publish on all subjects. The writer is responsible for the abuse of that right. Therefore, the liberty thus accorded the writer must not be confounded with mere license. The liberty of the writer stops where a further exercise would invade the rights of others. The guarantee of the Constitution does not authorize usurpation of the functions of the court. A writer with his liberty, has no right to assault a judge during the progress of a trial. When his thought and pen are used so as to constitute misbehavior in the presence of the court, or so near thereto as to obstruct the administration of justice, he invades the rights of others. There is little doubt

82 that a sentiment expressed in writing favorable or unfavorable to one of the parties in a case may be made to so prevade the community as to reach the court room and interfere with the fair and impartial consideration of a judge in the performance of his duty. But the essence of the offense is conduct reasonably calculated to produce such an atmosphere and such a result. It is well settled that where his contempt is committed without the presence of the court, every reasonable doubt will be resolved in favor of the accused. The charge
83 is quasi criminal. The language of the letter, particularly the portion which has been deemed offensive, could not in any degree, be considered misbehavior of a person "so near the presence of the court as to obstruct the administration of justice." There was but one letter. There seems to be but one paragraph which constitutes the charged misbehavior. By no interpretation can the letter be said to have any tendency to embarrass or influence the court so as to prevent a fair trial or a just conclusion in regard to any matter which was then pending before the court. Every case must be
84 measured by its own facts. To have adjudged this misbehavior "so near the presence of the court as to obstruct the administration of justice" was to exercise a power beyond the jurisdiction of the district judge.

The rule throughout, relied upon by the accuser, is the Toledo Newspaper case, supra. There the court imposed punishment for newspaper publications, but this was done on the grund that the publications obstructed justice. It was a very extreme case. It consisted of continuous and protracted attacks upon the judge. The Circuit Court

of Appeals stated (237 Fed., 986), by Judge Dennison: 85

> "Upon this record, the publications had reference to pending judicial action, and there is a finding of fact ('as alleged in the information') that they tended and were intended to provoke public resistance to an injunctional order, if one should be made, and there is a finding that they constituted an attempt to intimidate—at least unduly to influence—the District Judge with reference to his decision 86
> in the matter pending before him."

And the Supreme Court (Chief Justice White, 247 U. S., 402) in its opinion quoted and approved this finding:

> " 'That each of these findings is supported by competent evidence and for that reason binding upon this court is too clear for dispute; but we may rightly go further and say that it is difficult to see how any other findings could have been made' " (page 415). 87

In that case Justice White said further:

> "The test, therefore, is the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty,—a conclusion which necessarily sustains the view of the statute taken by the courts below * * *" (page 419).

The misbehavior must present an interruption which comes between the court and the considera-

88 tion of the subject matter then under submission in some way as to distract the mind of the court and pervert the course of justice, or even to divide the attention of the court. No such conclusion can be reached in the case at bar.

When a case or application is finished, the courts are subject to the same criticism as other people. In the case of Patterson vs. Colorado ex rel the Attorney General etc. (205 U. S., 454) Justice Holmes said:

89 "When a case is finished, courts are subject to the same criticism as other people, but the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."

Was there a cause pending within the rule of contempt concerning libelous publications? A cause is pending when it is still open to modifications, appeal or re-hearing and until the final judgment is rendered. Did the letter concern a cause
90 pending? If it did not, it could not obstruct the administration of justice. The application before the court which is the subject matter of the letter was the matter of a co-receiver. As to this the court had definitely decided adverse to the Comptroller. The court's action was complete in respect to this matter. It is true there is added to his opinion opportunity for another application, but this may well have been left unwritten. If a new application was made, even under suggestion of the opinion or the order, it would be necessary to do so as an entirely new application on new papers and facts. The leave granted was not one of re-

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argument. At any time upon a new showing, irrespective of the suggestion of the court, another application could have been made for the appointment of a co-receiver. Therefore, the court's action was complete in every respect and its order was entered when the letter was published. This appears by the return to the writ. The district judge pointed out, as did the information, that the whole railroad situation was before the Court, since it was an equity proceeding, but it is not of this that the defendant wrote. This is fully corroborated by the testimony of the defendant. He also testified that he had no intention of obstructing the delivery of justice or misbehaving himself so as to obstruct the administration of justice. He stands convicted upon his letter alone and such inferences as may be drawn therefrom. His conviction rests upon an issue between the Court and the defendant, and it is one of terminology or interpretation.

92

There is no criminal intent discoverable from this record to support the interruption placed upon it by the Court, nor was there pending *sub judice* a proceeding before the Court at the time the letter was written.

93

The conclusion is irresistible that the Court exceeded its jurisdiction by an excess of power in adjudging the defendant guilty.

The petition for discharge is granted.

Dated, April 29, 1921.

MARTIN T. MANTON,
United States Circuit Judge.

94

It is Ordered that the papers in this proceeding be filed with the Clerk of the United States District Court for the Southern District of New York, in his office in the Post Office Building, in the Borough of Manhattan, City of New York, and that this order be recorded in said court.

Dated, April 29, 1921.

MARTIN T. MANTON,
U. S. Circuit Judge.

95 Filed April 29, 1921.

Writ of Habeas Corpus.

The United States of America,
Second Judicial Circuit,
Southern District of New York. } ss.:

We command you that the body of Charles L. Craig, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before Honorable Martin T. Manton, United States Circuit Judge for the
96 Second Judicial Circuit, with the Circuit and District aforesaid, to do and receive all and singular those things which the said Judge shall then and there consider of him in this behalf; and have you then and there this writ.

WITNESS the Honorable Martin T. Manton, United States Circuit Judge for the Second Judicial Circuit, this 24th day of February, 1921, and in the 145th year of the Independence of the United States of America.

MARTIN T. MANTON,
U. S. C. J.

Petition for Writ.

97

To the Honorable Martin T. Manton, Circuit Judge of the United States:

Your petitioner, Charles L. Craig, Comptroller of the City of New York and as such a member of the Board of Estimate and Apportionment in said City, humbly complaining, shows:

(1) Your petitioner is a citizen of the United States and resides in the City and County of New York, in the Southern District of New York.

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(2) Your petitioner is unjustly and unlawfully detained and imprisoned and deprived of his liberty by Thomas D. McCarthy, United States Marshal of the Southern District of New York.

(3) The facts and circumstances, upon which rested the order and commitment which were and are the cause or pretext of said detention of your petitioner, and which order and commitment are hereinafter set forth, are as follows:

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(4) On or about the 13th day of November, 1919, an information was filed in the office of the Clerk of the District Court of the United States, for the Southern District. Upon said information and the affidavits of Ben. A. Matthews and Carl Brecher, verified November 20, 1919, an order was made by Honorable Julius M. Mayer, United States District Judge, dated November 20, 1919, requiring your petitioner to show cause why he should not be declared and adjudged in contempt of this Court by reason of the facts set forth in said information. Copies of said information, af-

100 fidavit and order are hereto annexed, marked Exhibit A.

(5) On the 2nd day of December, 1919, your petitioner appeared specially, but not generally, and filed his notice of said special appearance in the form hereto annexed, marked Exhibit B, to object to the jurisdiction of his person and jurisdictionally to the sufficiency, form, validity, substance and subject matter of the order to show cause dated November 29, 1919, and information annexed
101 thereto.

(6) A hearing was thereupon had thereon and the said special appearance was overruled and disallowed and your petitioner was directed to appear and plead, to which your petitioner's counsel duly excepted.

(7) At the time specified your petitioner attended in Court involuntarily by counsel, appearing specially and not generally, and again made objection to the exercise of jurisdiction by the Court
102 and said Judge, which objection was overruled and exception noted thereto by counsel for your petitioner, whereupon your petitioner entered a general appearance involuntarily. The proceedings incident thereto were taken stenographically and transcribed, as appears by the minutes thereof, a copy of which is herewith submitted.

(8) Thereupon your petitioner, still reserving his objection to the jurisdiction of the Court, filed a motion to quash, a copy of which is hereto annexed and marked Exhibit C. Said motion to

quash was overruled by the Court in each and every respect, to which your petitioner's counsel duly excepted. 103

(9) Thereupon your petitioner filed a demurrer to the information, which after hearing was overruled and your petitioner directed to plead, to which your petitioner's counsel thereupon duly excepted. A copy of said demurrer is hereto annexed and marked Exhibit D.

(10) That thereafter and on or about the 15th day of March, 1920, your petitioner entered a plea of Not Guilty. A copy of said plea is hereto annexed and marked Exhibit E. 104

(11) Your petitioner made due and timely objection to proceeding before Honorable Julius M. Mayer, a Judge of said District Court, with respect to whom the writing which formed the basis of the informaion was written, and asked that another Judge of the District Court be designated to hear the proceeding; but the said objection and request were and each of them was overruled, to which exception was duly taken by counsel for your petitioner. 105

(12) Thereafter a hearing was had upon the said information and upon such plea of Not Guilty and witnesses were examined, exhibits introduced and the proceedings and all thereof were taken stenographically and thereafter transcribed, as appears by the minutes thereof, a copy of which is herewith submitted. Said hearing was held on and between the 10th day of May, and the 10th day of June, 1920.

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(13) Briefs of counsel were submitted on or about the 30th day of October, 1920, and on or about the 14th day of February, 1921, the Court handed down and filed its decision or opinion, a copy of which is hereto annexed and marked Exhibit F.

(14) Thereafter and on or about the 23rd day of February, 1921, the Court entered an order and the same was filed in the District Court for the Southern District of New York, a copy of which
107 is hereto annexed and marked Exhibit G.

(15) Thereafter and on or about the 24th day of February, 1921, at the City of New York in the Southern District of New York, the said Court, Honorable Julius M. Mayer, presiding, ordered and sentenced your petitioner as follows: to be imprisoned for a term of sixty days. Sentence to be executed at the Essex County Jail, Newark, N. J.

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109

At a Stated Term of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the United States Court Rooms, in the Borough of Manhattan, City of New York, on the 24th day of February, 1921, in the year of our Lord one thousand nine hundred and

Present—The Hon. JULIUS M. MAYER, Judge. 110

THE UNITED STATES
vs.
CHARLES L. CRAIG.
} Contempt.

On motion of the United States Attorney, Ordered sentence.

The Court thereupon proceeds to pass judgment, and sentence the prisoner Charles L. Craig to be imprisoned for a term of sixty days. 111

Sentence to be executed at the Essex County Jail, Newark, N. J.

An extract from the minutes.

ALEX GILCHRIST, JR.,
Clerk.

(Seal.)

112

(16). Thereupon your petitioner was taken into custody by said Marshal.

(17). Your petitioner further avers:

a. That neither on the 6th nor the 7th day of October, 1919, was there pending *sub judice* before said District Judge or said Court any matter or judicial determination in any suit or proceeding mentioned in the Information or in any suit or proceeding consolidated with any or either of such
113 suits and proceeding.

b. That all orders and judicial determinations which were referred to in the letter of October 6, 1919, from your Petitioner to Lewis Nixon, Public Service Commissioner, set forth in the said Information had been previously made and concluded and that no hearing was pending, awaiting determination, upon any of said orders or judicial determinations or the subject matter thereof.

c. That the letter of October 6, 1919, from your Petitioner to Lewis Nixon, Public Service Com-
114 missioner, set forth in the said Information, was an official communication from the defendant as Comptroller of the City of New York and a member of the Board of Estimate and Apportionment of said City to the Public Service Commissioner, a public official of the State of New York, relating to the performance and discharge of their respective functions and duties and within the scope of their authority in matters committed by law to their control and supervision.

d. That the letter of October 6, 1919, from your petitioner to Lewis Nixon, Public Service Commis-

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sioner, set forth in the Information, was a privileged communication.

e. That the Information showed affirmatively that the letter therein set out and complained of was an official communication from one public official to another public official, written and dispatched of and concerning public business and with relation to their respective duties.

f. That neither the letter of October 6, 1919, set forth in the Information, nor its sending was a contempt of the authority of said Court or said Judge. 116

g. That the letter of October 6, 1919, from your Petitioner to Lewis Nixon, Public Service Commissioner, set forth in the Information, was not published or caused to be published by or at the instance or upon the procurement of your Petitioner and the proofs established that it was not so published or caused to be published.

h. That the said letter was not ever published by the defendant with the view or intent of influencing the judicial determination or decision of the Court upon or with respect to any matter or issue then pending before the District Court for judicial determination or decision and that the proofs failed to show that it was so published. 117

i. That no contempt of the authority of said District Judge or the United States District Court for the Southern District of New York has been committed by your Petitioner, and that neither the Information nor proofs showed any such contempt.

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j. That your Petitioner had not in any way obstructed the administration of justice before said Judge or in said Court, nor behaved in such a way as to obstruct or tend to obstruct the administration of justice before said Judge or in said Court, and that neither the Information nor the proofs showed any such obstruction.

k. That your petitioner, in the matters referred to in said information, had not acted in any way as an officer of said Court in official transactions
119 and had not disobeyed nor resisted any writ, process, order, rule, decree or command of said Court.

l. That the letter of October 6, 1919, from your Petitioner to Lewis Nixon, Public Service Commissioner, set forth in the said information, did not charge the court with the denial of justice nor with the denial of any right accorded by law.

m. That your petitioner had no intention to commit a contempt of said Court, nor was there any proof of any such intent.

120 n. That neither the court nor judge acquired jurisdiction of the person of the defendant.

o. That neither the court nor judge had jurisdiction of the subject matter set out in the information.

p. That the district judge exceeded his jurisdiction in making the orders, judgment, decree, and commitment made in the proceeding upon said information and each of them.

121

q. That the said court and the said district judge acted in excess of its and his powers in finding your petitioner guilty of contempt.

r. That the information upon which the proceeding against your petitioner was instituted contained no prayer for your petitioner's punishment, detention or imprisonment.

s. That the order dated November 20, 1919, based on the information upon which the proceeding against your petitioner was instituted contained no provision relating to your petitioner's punishment, detention or imprisonment and gave no notice thereof.

122

t. That the punishment was (a) excessive, (b) unusual and (c) not warranted by law or the proceedings taken against your petitioner.

u. Your petitioner has been deprived of his liberty without due process of law, in that he has been adjudged guilty of a criminal contempt without allegation or proof before the Court of any contemptuous offense.

123

v. That the letter of October 6, 1919, set forth in the said information was not written with the intention or for the purpose of influencing the action of or coming to the attention of the Court; and that neither the information alleged nor the proofs established that it was.

w. That the information does not show, nor did the proofs establish any contempt in the face of the court or constructively in its presence.

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x. That the sentence under which your petitioner is held is excessive, illegal and void.

y. That the commitment under which your petitioner is held is illegal and void.

z. That the court was without jurisdiction to impose the particular sentence under which your petitioner is held.

aa. That your petitioner's imprisonment and de-
125 tention under said sentence is contrary to the laws of the United States.

18. All of the evidence in the case is herewith submitted. The pleadings, notices, petitions, orders, minutes, papers and docket received in evidence are on file in the office of the Clerk of the United States District Court for the Southern District of New York and are by reference made a part hereof.

Annexed hereto is a transcript of the testimony of your petitioner marked Exhibit H.

126 19. Your petitioner further alleges that said order and commitment were and are void and were made without any jurisdiction in the court or the said judge to make, file or enter the same and that your petitioner is being deprived of his liberty without any lawful warrant or authority whatsoever and without due process of law and, since being taken into custody by said Marshal, as aforesaid, has been continuously so deprived of his liberty, in violation of the Constitution of the United States, and especially the Fifth Article of the amendments thereof and in violation of the laws of the United States.

127

WHEREFORE your petitioner prays that a writ of Habeas Corpus issue directed to said Marshal as aforesaid, and that the matters and things contained be inquired of and that your Petitioner be ordered discharged from the detention and imprisonment aforesaid, and for such other and further relief as may be just.

Dated, February 24th, 1921.

CHARLES L. CRAIG,
Petitioner.

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State of New York,
City of New York,
County of New York, } ss.:

Charles L. Craig, being first duly sworn, deposes and says that he is the person named in and whose name is subscribed to the foregoing petition. That he has read and is familiar with the contents of said petition; and that the matters thereof and things therein contained are true in substance and in fact.

129

CHARLES L. CRAIG.

Subscribed and sworn to before me this
24th day of February, 1921.

ARTHUR P. LAVERY,
New York County, No. 392.
Term expires March 31, 1922.
Notary Public.

(Seal)

Filed, with Exhibits A, B, C, D, E, F, G & H attached, April 29, 1921.

130 **Exhibit A to Petition for Writ—Information for Contempt.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Of the November Term in the year of our Lord One Thousand nine hundred and nineteen.

NOW comes Francis G. Caffey, United States Attorney for the Southern District of New York,
131 pursuant to the order of this Court entered herein October 6, 1919, and respectfully informs the Court as follows:

There are, and during all the times hereinafter mentioned subsequent to the respective dates of their commencement, as hereinafter stated, there have been pending in this Court

(1) A suit, now docketed as Equity Consolidated Cause Number E-15-347, entitled "Westinghouse Electric and Manufacturing Company, plaintiff,
132 against Brooklyn Rapid Transit Company, New York Municipal Railway Corporation and New York Consolidated Railroad Company, defendants," hereinafter referred to as the B. R. T. suit;

(2) A suit, now docketed as Equity Consolidated Cause Number E-16-151, entitled "The Americacn Brake Shoe and Foundry Company, plaintiff, against New York Railways Company, defendant, the Farmers' Loan and Trust Company, trustee, complainant, against New York Railways Company, Job E. Hedges as receiver of the New York Railways Company, and the American Brake Shoe

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and Foundry Company, defendants," hereinafter referred to as the New York Railways suit; and

(3) A proceeding, docketed in Bankruptcy as Case Number 26,690, entitled "In the Matter of the Interborough Consolidated Corporation, Bankrupt," hereinafter referred to as the bankruptcy proceeding.

The pleadings, notices, petitions, orders, minutes, papers and dockets in each of said suits and in said proceeding, all of which are on file in this Court, are by reference hereto annexed and made 134
a part hereof.

The B. R. T. suit was commenced by the filing on or about December 31, 1918, of a bill in equity in substance for the marshaling and conservation for the benefit of creditors of the assets of the Brooklyn Rapid Transit Company, New York Municipal Railway Corporation and New York Consolidated Railroad Company, the defendants therein, and praying, among other things, for the appointment of a receiver of such assets. This Court had and assumed jurisdiction of the cause, and appointed Lindley M. Garrison temporary receiver on or 135
about December 31, 1918, and permanent receiver on or about January 15, 1919, of such assets. The said receiver took possession of such assets on or about the date of his appointment and has been at all times since and is now in possession thereof and is still acting as such receiver.

On January 15, 1919, the New York State Public Service Commission for the First District moved this Court for leave to intervene in the B. R. T. suit, in the name and on behalf of the City of New York, and for the appointment therein of a co-receiver. On the same day, pursuant to a reso-

136 lution of the Board of Estimate and Apportionment of the City of New York, a copy of which is hereto annexed as Exhibit A, the City of New York through its Corporation Counsel as its solicitor applied to this Court for the appointment as co-receiver in the B. R. T. suit of the Honorable Charles L. Craig, who then was and ever since has been the Comptroller and chief financial officer and a member of the Board of Estimate and Apportionment of the City of New York, and who is hereinafter called the defendant. Such motion of the
137 Public Service Commission and application of the City of New York duly came on for hearing and were argued. In its opinion disposing of the same, this Court, among other things, said:

> I do not for a moment foreclose the proposition that there may readily come in the course of this receivership a time when one or more receivers may be regarded as helpful and necessary to the Court. I can imagine that when the time comes to work out the financial future of this company, that the aid of a re-
> 138 ceiver representing at that time the united view of the public authorities, may be of great service, and I do not wish to be understood as dealing with anything but the situation as it now stands upon this 15th day of January, 1919.
>
> There may very well be a time—I repeat—when especially in dealing with the financial situation, it may become extremely helpful and co-operative to have an additional receiver, but I do not see that that time is here at the moment. At this moment what this receivership

139

is concerned with is to get down to business as fast as it can. It has already started.

* * * * * * *

In these circumstances * * * I deny the motion for a co-receiver without prejudice to its renewal at such time as counsel may be advised.

Thereafter, on January 22, 1910, this Court, in conformity with its opinion aforesaid, entered an order in part as follows:

140

The applications made herein on behalf of the City of New York and on behalf of the Public Service Commission for the First District of the State of New York for the appointment of an additional receiver or receivers herein are hereby denied without prejudice to the right to renew said applications or either of them at such time as counsel may be advised.

Decision upon the application of the Public Service Commission for the First District of the State of New York for leave to intervene as a party herein is hereby reserved.

141

Notice of all subsequent proceedings herein other than those relating to the ordinary current administration of the receivership shall be given to the solicitors for the following, namely:

The City of New York.

The Public Service Commission for the First District of the State of New York, * * *.

Pursuant to said order the Corporation Counsel of the City of New York, the solicitor for said

142 City, has been served with notice of all subsequent proceedings in the B. R. T. suit, except those relating to the ordinary current administration of the receivership, and from time to time has appeared for the city in various proceedings in said suit. The City of New York has never applied for leave to intervene in said suit, nor has it renewed its application for the appointment of a co-receiver therein.

On July 14, 1919, this Court appointed the said Lindley M. Garrison temporary receiver of the as-
143 sets of four surface street railway corporations, to wit: The Brooklyn Heights Railroad Company, The Nassau Electric Railroad Company, The Coney Island & Brooklyn Railroad Company, and The Brooklyn, Queens County and Suburban Railroad company. On August 26, 1919, this Court made said appointment permanent and consolidated the suit in which the appointment was made with the B. R. T. suit.

The New York Railways suit was commenced by the filing on or about March 20, 1919, of a bill in equity in substance for the marshaling and con-
144 servation for the benefit of creditors of the assets of the New York Railways Company, the defendant therein, and praying, among other things, for the appointment of a receiver of such assets. This Court had and assumed jurisdiction of the cause and appointed Job E. Hedges temporary receiver on or about March 20, 1919, and permanent receiver on or about March 30, 1919, of such assets. The said receiver took possession of such assets on or about the date of his appointment and has been at all times since and is now in possession thereof, and is still acting as such receiver.

145

The Corporation Counsel of the City of New York has frequently appeared before this Court, and argued applications made to this Court by others, in the New York Railways suit; and has been served with notice of all proceedings therein, except those relating to the ordinary current administration of the receivership; but the City of New York has never applied to this Court for any relief in said suit, nor applied for leave to intervene therein, nor applied for the appointment of a co-receiver therein.

146 The bankruptcy proceeding was begun by the filing in this Court on or about March 21, 1919, of an involuntary petition in bankruptcy against the Interborough Consolidated Corporation. Thereafter, on or about March 28, 1919, said corporation was duly adjudicated a bankrupt. On or about March 21, 1919, James R. Sheffield was duly appointed receiver of the assets of the said bankrupt and on or about April 25, 1919, was elected and appointed trustee of the said bankrupt estate. This Court had and assumed jurisdiction of the said proceeding. The City of New York has never filed a claim and has never appeared, nor has it 147 asked for the appointment of a co-receiver or a co-trustee, in said proceeding.

On and prior to September 1, 1919, there were involved in said suits and proceedings hereinbefore mentioned, and there were held by the receivers and bankruptcy trustee hereinbefore named, the assets of a large and substantial portion of the elevated, street surface and subway traction lines within the City of New York, particularly in the Borough of Manhattan and Brooklyn, the names of some of which lines have been above set forth.

148

Prior to September 1, 1919, pursuant to an order of this Court, Stone & Webster, experts, were employed by or on behalf of said receivers to make a report upon the financial position of the corporations and properties involved in said suits and proceeding. In the course of their work, the said Stone & Webster made a preliminary report dated September 4, 1919. Upon the coming in of such report this Court made and issued, and filed in said suits and proceeding, a memorandum, dated September 6, 1919, containing, among other things,
149 directions to said receivers and trustee of the tenor following:

> In order that the gravity of the situation may be generally made known and that some appropriate action may be taken as speedily as is consistent with full information, the Receivers are instructed to send a copy of the summary of Messrs. Stone & Webster and of this memorandum to the State and Municipal authorities, and to civic and taxpayers' associations of the Greater City. At the same
> 150 time, the Receivers will make it clear that every facility will be afforded, both to public officials and citizens' associations to satisfy themselves in respect of the actual financial and other conditions existing in relation to the corporations now in their official charge.

On September 8, 1919, a copy of said memorandum and a copy of said report of Stone & Webster, together with a written notice from the said receivers and trustee that all of the persons and bodies to whom the same were sent would be afforded every facility to satisfy themselves in re-

151

spect of the actual financial and other conditions existing in relation to the corporations then in the official charge of such receivers and trustee, were mailed to the defendant and to others, in accordance with this Court's direction in said memorandum, and on or about September 9, 1919, the said copies of such report and memorandum and the said notice were received by the defendant. A copy each of said report, memorandum and notice is hereto annexed as Exhibits B1, B2 and B3, respectively, and made a part hereof.

152

Neither the defendant nor any member or members of the Board of Estimate and Apportionment, nor any other authorized representative, of the City of New York has ever been denied by this Court, or by any one acting under its authority, or by either of said receivers or by the said trustee or by any authorized representative of either of said receivers or of said trustee, access to any original or other source of information concerning any of the property or affairs of any public utility corporation holding any franchise from, or any franchise to operate over, on or under any street of, the City of New York.

153

On October 1, 1919, the Honorable Lewis Nixon, Public Service Commissioner for the First District of the State of New York, called a conference, to be held at his office in the Borough of Manhattan, City of New York, on Monday, October 6, 1919, for the purpose of discussing the financial and physical condition of the traction lines in the City of New York, including those involved in the said suits and proceeding pending in this Court, and considering any suggestions that might be made by the conferees with respect to the future of said

154 lines and the relations between them and the City of New York. To said conference the said Commissioner invited the officials of the City of New York, the officials of said traction lines, and the said receivers and trustee or their counsel. On or about October 2, 1919, the defendant received an invitation to said conference, dated October 1, 1919, a copy of which is marked Exhibit C and hereto annexed and made a part hereof.

On October 6, 1919, at and within the City, County, State and Southern District of New York,
155 and within the jurisdiction of this Court, the defendant Charles L. Craig, who was then Comptroller and chief financial officer and a member of the Board of Estimate and Apportionment of the City of New York as aforesaid, and an attorney-at-law, well knowing all the facts hereinbefore alleged, wilfully, knowingly, unlawfully and contemptuously did, in response to the invitation aforesaid, write to the Honorable Lewis Nixon, Public Service Commissioner, as aforesaid, a letter of the following tenor, to wit:

156 October 6, 1919.

Hon. Lewis Nixon,
Public Service Commissioner,
No. 49 Lafayette Street,
New York City.

Dear Sir:

Replying to your letter of October 1st:

Apparently without inquiry and without information, you have fixed the time for the proposed conference upon a date which, if observed, would require the members of the

157

Finance and Budget Committee of the Board of Estimate and Apportionment (comprising the entire Board), to drop the preparation of the largest budget in the history of New York City, in which work, as you could easily have ascertained, they have been for some time and must continue to be engaged in daily sessions from early to late:

In your letter you say:

"It may be necessary to review figures and examine leases and agreements that will consume time."

158

Before any such conference can be seriously considered, and as an evidence of good faith on the part of those acting by and under the authority of United States District Judge Mayer, there must be a reversal of the policy for which Judge Mayer is responsible, of denying to myself and other members of the Board of Estimate and Apportionment any access to original sources of information concerning the property and affairs of these various public utility corporations holding franchises to operate in the streets of New York.

159

When the applications were made to Judge Mayer in the "friendly" proceedings instituted by those interested in these corporations for the appointment of a Receiver of their own liking, if not of their own selection, the Corporation Counsel of The City of New York acting under instructions from the Board of Estimate and Apportionment given at my instance, urged upon Judge Mayer that he appoint an additional or co-receiver acceptable to the Board of Estimate and Apportionment, to see that the facts and conditions of the cor-

160 porations involved were fairly and fully presented to the United States District Court in the course of the receivership, so that any orders or decrees that might be made by the Court would be fair and just to The City of New York, and the members of the Board of Estimate and Apportionment might be accurately informed with respect thereto in order that any action deemed necessary by the City might be taken.

As you must be aware, it is a very common
161 thing in large receiverships to appoint additional receivers, particularly where there are varied and conflicting interests; and I have never been able to understand why in a matter of great public concern such as this, Judge Mayer set himself against it. It was clearly understood that conditions were certain to develop in these receiverships where the responsible authorities would be urged to take action which no honest or intelligent man could be expected to consider without the most exact and complete information upon the entire sub-
162 ject. Judge Mayer refused to grant any of the relief sought by the City. He not only denied the relief but he made orders which preclude any application being made by the Municipal authorities to any other Court or Judge for any right of examination into the affairs or conditions of these corporations seeking Municipal aid and favor.

Truth is the mightiest weapon in every controversy. The orders of Judge Mayer deny to the Municipal authorities the opportunity to ascertain the truth.

163

The franchise and rights enjoyed by these corporations were mostly all procured many years ago when corrupt political rings were in control of public affairs and the darkest scandals of Municipal history, both in the old City of New York and in the City of Brooklyn prior to consolidation, are those in relation to such grants. The affairs of the franchise holding corporations have been in the hands of the boldest and most unscrupulous manipulators engaged in the exploitation of the rights obtained from corrupt political rings. Up to the 164
present moment they have defied every power that has sought to open up the books and original records for search and examination in the public interest. They will open and open wide without any reservations or restrictions before there will be any conference so far as I am concerned.

It seems to me a monstrous thing that an order of a Federal Judge in a Court of Equity should stand between the public and the truth under such circumstances. Such an order is hostile in every interest of The City of New 165
York in these controversies. Its operation and effect is to disarm the Municipal authorities, to deny them the most effective instrument of redress, and to force them into a contest with corporate powers entrenched in darkness and concealment.

The responsibility for the turmoil, delay and dissatisfaction that has followed upon the orders of Judge Mayer, denying to The City of New York any representation in these receiverships, rests upon those who procured and are protected by such officers.

166 As a first and preliminary evidence of good faith, those who desire such a conference and a reasonable solution of existing complications, should procure the entry of orders by Judge Mayer putting The City of New York on an equal footing with the private interests active in the receiverships. A refusal to do this can but prolong and embitter the controversy; and it will not in the end procure any advantage whatever to the traction interests.

167 Yours very truly,

Charles L. Craig,
Comptroller;

and did cause the said letter to be delivered to the said Public Service Commissioner and to the persons attending the said conference at the said office of said Public Service Commissioner, and did cause the same to be published in various newspapers including on October 6, 1919, The Evening Post, The Evening Mail, The Evening Sun, The Evening
168 World, The Globe and Commercial Advertiser, and The Evening Telegram, and on October 7, 1919, The New York Times, The World, New York Tribune, The Sun, New York American, and New York Evening Journal, all of which newspapers then were and long prior thereto had been of general circulation and widely read by the public within and throughout the Southern District of New York.

1. In said letter it was stated that this Court in the said suits and proceeding was responsible for a policy of denying to the defendant and to other members of the Board of Estimate and Apportion-

ment of the City of New York any access to original sources of information concerning the property and affairs of the various public utility corporations in the hands of receivers appointed by this Court and holding franchises to operate in the streets of New York; whereas, in truth and in fact this Court never adopted such a policy, but on the contrary afforded to the defendant and to all members of the Board of Estimate and Apportionment of the City of New York access to the said original sources of information and every facility for obtaining information concerning the property and affairs of the said corporations and expressly directed that the City of New York and its officials should have access to such information, and in truth and in fact at no time since this Court assumed jurisdiction of any of said corporations as aforesaid has this Court or any one acting under its authority ever denied to the defendant or to any member of the Board of Estimate and Apportionment, or to any authorized representative of the City of New York or of any of its officials, access to original or to any other sources of information concerning the property or affairs of any of said corporations.

2. In said letter it was stated that this Court made orders which precluded any application being made by the authorities of the City of New York to any other Court or Judge for any right of examination into the affairs or conditions of the said public utility corporations; whereas, in truth and in fact this Court has never made any such order, and on the contrary, prior to the writing of said letter, this Court expressly ordered and directed

172 that there should be given to the authorities of the City of New York every opportunity and facility for making such examination.

3. In said letter it was stated that the orders of this Court denied to the authorities of the City of New York the opportunity to ascertain the truth; whereas, in truth and in fact this Court has never made any such order, and has never made any order that has, has had, or could have such effect, but on the contrary prior to the writing of said letter
173 this Court ordered and directed that there should be afforded to the authorities of the City of New York every opportunity and facility for ascertaining the truth.

4. In said letter it was stated that an order of this Court stands between the public and the truth; whereas, in truth and in fact no order that this Court has made has, has had, or could have such effect, but on the contrary every order in the above mentioned suits and proceeding tended and was designed to place the public in possession of
174 the truth, and prior to the writing of said letter this Court expressly ordered and directed that every facility be afforded to public officials and citizens' associations to satisfy themselves in respect of the financial and other conditions existing in relation to the corporations in charge of said receivers.

All of the foregoing statements in said letter, numbered from 1 to 4 inclusive, and each of them, are and were false and were *known by the* defendant to be false when made and were made in reckless disregard of the truth.

175

In addition to the statements above enumerated, the defendant by such letter intended to charge and wilfully, knowingly, unlawfully, falsely and contemptuously therein and thereby did charge that this Court concealed the truth from the public and officials and kept hidden facts which, in order to protect the public interests, should have been known to the public and public officials; whereas, in truth and in fact this Court did not conceal the truth or keep any facts hidden from the public or from any public official, but on the contrary prior to the writing of said letter this Court ordered and 176 directed that there should be given to the public and public officials every opportunity to ascertain the truth and every facility which might aid in revealing the truth, and caused the Corporation Counsel for the City of New York to be served with notice of all proceedings in said suits other than those relating to the ordinary current administration of said receiverships.

The said letter, as well as the publication thereof as aforesaid, each tended and was calculated and intended by the defendant to influence this Court in its consideration of suits and proceeding afore- 177 said, pending when said letter was written, delivered and published as aforesaid and still pending in this Court, to intimidate this Court in the exercise of its lawful functions, to force and compel this Court to decide applications, questions and issues in such suits and proceeding in accordance with the views and wishes of the defendant, to threaten this Court with and to incite public ridicule, scorn and condemnation of it if its decisions were contrary to or at variance with such views and wishes of the defendant, to misrepre

178 sent this Court's actions and its reasons for acting as it had acted and was acting in said suits and proceeding, to obstruct the enforcement of this Court's orders herein, to incite and cause public disregard of and resistance to such orders, to bring this Court into public condemnation, obloquy, odium, scorn and contempt, and to obstruct and impede the administration of justice in said suits and proceeding, and in all other actions, suits and proceedings in this Court; against the peace of the United States and their dignity and contrary to the form
179 of the statute of the United States in such case made and provided and in contempt of this Court (Judicial Code of the United States, Section 268).

FRANCIS G. CAFFEY,
United States Attorney.

Exhibit A.

180 WHEREAS, the people of the City of New York have invested in the construction of the Rapid Transit Subway Railroads provided by Contract No. 4 between the City and the New York Municipal Railway Corporation the sum of over $124,000,000; and

WHEREAS, there are now existing claims by the City against the Brooklyn Rapid Transit Company and its subsidiary companies for unpaid paving charges, percentages, car license fees, taxes, etc., amounting to over $11,000,000; and

WHEREAS, an action has been brought by the Westinghouse Electric and Manufacturing Com-

pany in the United States District Court, Southern District of New York, against the Brooklyn Rapid Transit Company, the New York Municipal Railway Corporation and the New York Consolidated Railroad Company to recover about $40,000, and the said companies have admitted their inability to pay said claim; and 181

WHEREAS, in said action and under the said admission and with the consent and approval of defendants in said action, on the 31st day of December, 1918, Lindley M. Garrison was appointed receiver of the property of said Brooklyn Rapid Transit Company, the New York Municipal Railway Corporation and the New York Consolidated Railroad Company and is now in actual possession of the property owned by the City of New York, representing an expenditure of over $124,000,000 of the people's money, including said Rapid Transit Subway properties operated or to be operated by said Municipal Railway Corporation or its assignee, the New York Consolidated Company, under said Contract No. 4, by an order duly made and entered on that day by Judge Julius M. Mayer, of the United States District Court, Southern District of New York; and 182 183

WHEREAS, it is of the utmost importance that the rights of the City, its taxpayers and its people should be protected and secured to the utmost advantage during said receivership, in view of the vast sums of money now invested in said properties by the people or due by said companies to The City of New York, it is therefore

RESOLVED, that the Corporation Counsel be and he hereby is instructed to appear on the return

184 day of said order appointing the said Lindley M. Garrison as such receiver, to wit, January 15th, 1919, and for and in the name of The City of New York then and there to ask for the appointment of the Comptroller, Charles L. Craig, the chief financial officer of The City of New York, as co-receiver in the said suit now pending in the said United States District Court.

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185 **Exhibit B1.**

COPY.

STONE & WEBSTER
120 Broadway, New York

September 4, 1919.

Honorable Julius M. Mayer,
United States District Judge,
New York City.

186 Dear Sir:

In compliance with your request for information regarding the effect which the recent increase in wages will have upon the financial position of the properties in charge of your Receivers, we give you below, our estimate of the operating results of the various properties for the twelve months beginning September 1, 1919.

We may add that the various operating officials are in substantial accord with our conclusions:

187

SURFACE LINES IN MANHATTAN (NEW YORK RAILWAYS COMPANY) IN CHARGE OF RECEIVER HEDGES:

For the twelve months the aggregate operating deficit of these lines will be about $1,113,000

SURFACE LINES OF BROOKLYN IN CHARGE OF RECEIVER GARRISON:

For the twelve months the aggregate operating deficit of these lines will be about 1,268,000

188

Total Operating Deficit of these Surface Lines of the two Boroughs for the twelve months 2,381,000

This means that the income of these surface lines will fail by about $200,000 per month to provide actual operating expenses and taxes *without any provision for bond interest, rentals and other fixed charges,* and will fail by about $853,000 per month to earn these fixed charges.

Upon the basis of the present cost of materials, and supplies, rates of wages and fares, there is no prospect that these surface lines will earn their operating expenses and taxes for years to come, if ever.

189

SUBWAY AND ELEVATED LINES IN MANHATTAN OPERATED BY INTERBOROUGH RAPID TRANSIT COMPANY, WHOSE STOCK IS IN THE HANDS OF JAMES R. SHEFFIELD, TRUSTEE IN BANKRUPTCY, OF THE INTERBOROUGH CONSOLIDATED CORPORATION.

These lines, which in the fiscal year 1917, earned a surplus of $8,885,358.52 above all fixed charges,

190 will for the next twelve months fail to earn fixed charges including the interest on the Company's $200,092,000 of outstanding bonds and notes (most of which were issued to provide for the Company's share of the cost of the Subways) by about $9,880,000

ELEVATED AND SUBWAY LINES IN BROOKLYN (BROOKLYN RAPID TRANSIT COMPANY) IN CHARGE OF RECEIVER GARRISON:

191 These lines, which in the fiscal year 1917, earned a surplus of $1,523,457 above all fixed charges, will for the next twelve months (after the payment of interest upon the recently issued Receiver's Certificates and upon the underlying mortgages) fail to earn the interest on the Company's $60,000,000 of outstanding bonds and notes issued to provide in part for the Company's investment in the new Subways by about $2,798,000

Upon the present basis of prices for materials and supplies, rates of wages and fares, there is no
192 hope that the Elevated and Subway Lines of either Borough will earn interest upon the Companies' investment in the Subways for many years to come, if ever.

Yours very truly,

(Signed) STONE & WEBSTER.

193

Exhibit B2.

UNITED STATES DISTRICT COURT,

Southern District of New York.

WESTINGHOUSE ELECTRIC and MANUFACTURING COMPANY,

Plaintiff,

against

BROOKLYN RAPID TRANSIT COMPANY, NEW YORK MUNICIPAL RAILWAY CORPORATION and NEW YORK CONSOLIDATED RAILROAD COMPANY,

194

Defendants.

THE AMERICAN BRAKE SHOE and FOUNDRY COMPANY,

Plaintiff,

against

NEW YORK RAILWAYS COMPANY,

Defendant.

IN THE MATTER

195

of the

INTERBOROUGH CONSOLIDATED CORPORATION

Bankrupt.

CENTRAL UNION TRUST COMPANY OF NEW YORK,

Plaintiff,

against

BROOKLYN RAPID TRANSIT COMPANY, NEW YORK MUNICIPAL RAILWAY CORPORATION, NEW YORK CONSOLIDATED RAILROAD COMPANY and LINDLEY M. GARRISON as Receiver, etc., et al.,

Defendants.

196

Exhibit B2.

MAYER, District Judge:

Messrs. Stone & Webster, acknowledged experts of high standing, were employed some months ago by direction of the Court, to undertake, among other things, an investigation of the financial condition of the properties affected by the receiverships pending in this court. This independent expert inquiry is now nearing completion and the
197 Court is awaiting the final report of Messrs. Stone & Webster, in respect of essential features of the transportation problems, including questions relating not only to financial conditions, but also to operation, property valuations and other important subjects.

Since this inquiry was begun, the financial difficulties of the roads have grown greater instead of less. The recent increase in wage cost made necessary the request by the Court for immediate information, to which Messrs. Stone & Webster have answered, as appears by their letter, a copy of
198 which is annexed.

This report, especially the statement that the surface lines in the charge of the Court's Receivers are failing by about $200,000 a month to earn their actual operating expenses, indicates a grave and immediate crisis. It is impossible to forecast the serious results which lack of financial aid may bring about, affecting most vitally the welfare of the people of the City of New York. Manifestly lines cannot long be operated at an actual loss. The problems involved press for calm and serious consideration and an earnest and united effort toward prompt solution. That some means must

be devised for at least temporary relief seems plain and urgent. 199

That plans should be worked out for determining the permanent status of the transportation companies and their legal and financial relations to the State and Municipal Governments, seems an obvious duty, the performance of which should be promptly undertaken.

The legal, financial and governmental questions involved are numerous and intricate and, naturally, there are differing views as to the wise and proper policies to be adopted. 200

Because the problems presented are so grave and the emergency is so pressing, and disaster so imminent, every good citizen must feel that the effort to solve these problems should be undertaken promptly and as nearly free from controversy, political or otherwise, as possible.

In order that the gravity of the situation may be generally made known and that some appropriate action may be taken as speedily as is consistent with full information, the Receivers are instructed to send a copy of the summary of Messrs. Stone & Webster and of this memorandum to the State and Municipal authorities, and to civic and taxpayers' associations of the Greater City. At the same time, the Receivers will make it clear that every facility will be afforded, both to public officials and citizens' associations to satisfy themselves in respect of the actual financial and other conditions existing in relation to the corporations now in their official charge. 201

Meanwhile, it is earnestly hoped that all who have official duties to perform, whether by State, Municipal or Legislative action, will reserve their judgment and conclusions on the fundamental

202 questions involved, until they shall have had adequate opportunity to satisfy themselves of the facts and of the real conditions existing. Such a course will enable all concerned to arrive at a just determination, based (as all just determinations must be), on an accurate knowledge of the facts.

JULIUS M. MAYER,
District Judge.

September 6, 1919.

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203 **Exhibit B3.**

New York, N. Y.,
Sep. 8th, 1919.

Dear Sir:

Pursuant to the direction of Judge Mayer of the United States District Court, we beg to send you herewith his memorandum with letter of Messrs. Stone and Webster attached.

At the same time we desire to state that every facility will be afforded to you to satisfy yourself in respect of the actual financial and other con-
204 ditions existing in relation to the corporations now in our official charge.

Respectfully yours,

LINDLEY M. GARRISON,
Receiver,
Brooklyn Rapid Transit Company.

JOB E. HEDGES,
Receiver,
New York Railways Company.

JAMES R. SHEFFIELD,
Trustee,
Interborough Consolidated Corporation.

205

Exhibit C.

October
First
1919

Hon. Charles L. Craig,
Comptroller and Member of the Board of
Estimate and Apportionment,
Municipal Building,
New York, N. Y.

Sir:—

206

As an outcome of to-day's hearing on the separation of lines from the New York Railways Company, I feel that it is my duty to invite you to attend a conference of all parties at interest in the transit situation.

My position since taking office has been that in case any concessions were granted by the City that concessions in return should be made by the Companies, such concessions to be of a nature that will induce the City Government to grant relief.

We are face to face, not only with vast losses to the people of the City, but with lowering of the standard of service, physical deterioration of property and equipment and demoralization of organization. 207

Had the matter received constructive and businesslike handling four months ago the present crisis could have been avoided and the great system of free transfers saved to the traveling public.

For temporary concessions extended to the companies great and lasting benefits could have been secured to the people of the City.

208

Efficient transportation is the life of our industrial and commercial enterprises. The disintegration already precipitated will lead to expense, inconvenience and confusion for the traveling public and almost insurmountable difficulties in regulation. And even worse is to come.

No one surely will assume the fearful responsibility of refusing to aid in mending this condition. The people of the City deserve better treatment as burdens are being fastened upon them that it will take many years to lift and some time even to
209 lighten.

I suggest a preliminary meeting at the offices of the Commission next Monday morning at ten-thirty o'clock.

The traction companies I beg to take counsel and present such plans as they think will prevent further collapse and that will in addition weld together the parted units, to the end that co-operation may be secured to at least as full an extent as existed before the receiverships began. They must be prepared to make drastic concessions for any favors received.

210

Order to Show Cause. 211

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

vs.

CHARLES L. CRAIG.

212

On the information filed herein on November 13, 1919, a copy of which is hereto annexed, and the affidavit of Carl Brecher verified November 20, 1919, and the affidavit of Ben A. Matthews verified November 20, 1919, it is

ORDERED that the above named defendant, Charles L. Craig, show cause before me at Room 235 Old Post Office Building, Borough of Manhattan, New York, N. Y., at 2:30 P. M. on December 2, 1919, why he should not be declared and adjudged in contempt of this Court by reason of the facts 213 set forth in said information.

Dated, New York, November 20, 1919.

JULIUS M. MAYER,
U. S. District Judge.

214 **Affidavit.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

vs.

CHARLES L. CRAIG.

215 Southern District of New York, ss.:

Carl Brecher, being duly sworn, deposes and says:

I am over the age of twenty-one years and am employed as a clerk in the office of the United States Attorney for the Southern District of New York. On November 12, 1919, I went to the office of the defendant, Charles L. Craig, Comptroller of the City of New York, in the Municipal Building, Borough of Manhattan, New York City, and went to the reception room leading to the private office
216 of the said defendant, Charles L. Craig. I there delivered a copy of the annexed letter to the man in charge of the said room and told him that the letter was important and related to a contempt proceeding. He said that he would deliver it to the defendant, Charles L. Craig

CARL BRECHER.

Sworn to before me this
20th day of November, 1919.

SAML. N. HITCHCOCK,
United States Commissioner,
Southern District of New York.

217

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

vs.

CHARLES L. CRAIG.

218

Southern District of New York, ss.:

Ben A. Matthews, being duly sworn, deposes and says:

I am Assistant United States Attorney for the Southern District of New York. On November 12, 1919, I delivered a copy of the annexed letter to Carl Brecher, a clerk in the office of the United States Attorney for the Southern District of New York, and instructed him to deliver the copy to the defendant, Charles L. Craig. The said defendant has not replied in any way to the said letter.

219

BEN A. MATTHEWS.

Sworn to before me this
20th day of November, 1919.

CARL BRECHER,
Notary Public,
Kings County,
Clerk's No. 466. Register's No. 1213,
N. Y. Clerk's No. 569, Reg's No. 1560,
Commission expires March 30, 1921.
(Seal)

Letter of Francis G. Caffey.

November 12, 1919.

Honorable Charles L. Craig,
Municipal Building,
New York City.

Sir:

I am about to file an information against you for contempt of court under Section 268 of the Judicial Code of the United States. Pursuant to similar practice in other like cases, this informal notice is given you in order that you may if you desire have your attorney arrange with me a time for your appearance in court. If you, adopt this suggestion it will not be necessary for me to have process for your production in court issued to the Marshal.

I shall await word from you until Thursday, noon, November 13, 1910.

You or your attorney will upon request be furnished with a copy of the information by this office.

Respectfully,

(Sg'd) FRANCIS G. CAFFEY,
United States Attorney.

Exhibit B to Petition for Writ—Notice of Special Appearance. 223

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

CHARLES L. CRAIG.

224

To

ALEXANDER GILCHRIST JR.,
Clerk of the District Court of the
United States
For the Southern District of New York.

Sir:

Charles L. Craig, Comptroller of The City of New York and as such a member of its Board of Estimate and Apportionment appears specially, but not generally, to object to the jurisdiction of his person and jurisdictionally to the sufficiency, form, validity, substance and subject matter of the Order 225 to Show Cause dated November 20, 1919, and Information annexed thereto.

Dated, New York, December 2, 1919.

WILLIAM P. BURR,
Corporation Counsel of
The City of New York,
Attorney for Defendant,
Appearing Specially,
Municipal Building,
Borough of Manhattan,
City of New York.

EDMUND L. MOONEY,
Special Counsel with
The Corporation Counsel of

226 **Exhibit C to Petition for Writ—Motion to Quash Information for Contempt.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES

vs.

227 CHARLES L. CRAIG.

Comes the Respondent, Charles L. Craig, and appearing specially in this cause, by William P. Burr, Corporation Counsel, his attorney, and Edmund L. Mooney and William E. C. Mayer, his counsel, and for the purpose of challenging the jurisdiction of the Court and the legality and sufficiency of the information, files this his motion to quash the same and dismiss the proceeding, on the ground that the Court has no jurisdiction over the
228 respondent to proceed herein, and on the ground that the information on its face shows that he should not be further held to plead or answer thereto and for separate and several grounds of this motion and for special causes why the quashal and dismissal prayed for should be allowed and entered, he sets down and assigns separately and severally the following:

1st. The court is without jurisdiction.

2nd. The court has no jurisdiction of the person of the respondent.

229

3rd. The information does not sufficiently inform the respondent what he is called upon to defend against.

4th. The information is insufficient in that it attempts by reference to other papers or writings to make a complaint or accusation against the respondent and does not embody in the information itself the recitals or parts of said other writings or papers relied upon, so as to show the respondent clearly what he is called upon to respond to.

230

5th. Because the information recites matters and things shown upon its face not to be within the personal knowledge of the United States Attorney, and does not aver that he charges or presents them upon information and belief.

6th. Because the information contains averments of fact not within the personal knowledge of the United States Attorney and is not verified.

7th. Because the information is not verified.

8th. Because the information does not charge the 231
respondent with any offense.

9th. Because the information on its face shows that the respondent is not therein charged with any misbehavior in the presence of the Court.

10th. Because the information shows on its face that the respondent is not charged with any misbehavior in the presence of the Court or so near thereto as to obstruct the administration of justice.

232

11th. Because the information does not show any contempt in the face of the Court or constructively in its presence.

12th. Because the information, when construed most strongly against the pleader, does not aver or show that any publication was made by the respondent of or concerning the court.

13th. Because the information shows on its face that the letter set out therein was a privileged com-
233 munication.

14th. Because the information shows that the letter therein set out and complained of was an official communication from one public official to another public official, written and dispatched of and concerning public business.

15th. Because the information does not show that the letter therein set out and complained of was written with a view of influencing the court with respect to the decision of any matter or issue then pending before the court for decision or judicial
234 determination.

16th. Because the averments of the information show on their face that the letter therein set out and complained of was not written for the purpose of obstructing the administration of justice.

17th. Because the averments of the information do not show any criticism of the Court with respect to a cogitation of the court then in process of development.

235

18th. Because it does not sufficiently appear from the averments of the information that the publication of the letter set out and complained of was ever authorized by the respondent.

19th. Because it does not sufficiently appear from the averments of the information that the letter therein set out and complained of was ever authorized by the respondent to be published with the intent or view of obstructing the administration of justice.

236

20th. Because it does not sufficiently appear from the averments of the information that the letter therein copied and complained of was ever by this respondent authorized to be published with the view and intent of influencing the judicial determination or decision of the Court upon or with respect to any matter or issue then pending before the court for judicial determination or decision.

21st. Because for aught that appears in the information the letter from the respondent as Comptroller to Nixon as Commissioner was itself, as a matter of law, a public document which the respondent was powerless to suppress or withhold from publication.

237

22nd. Because the averments of the information are vague, uncertain and indefinite.

23rd. Because the averments of the information are incomplete and unintelligible, except when assisted by other outside or collateral papers or writings, the parts of said outside papers so necessary to be referred to not being copied or set out in the information.

238

24th. Because the information is entirely insufficient in law.

25th. Because the averments of the information show nothing done, said, written or published by the respondent which calls in question or amounts in law to contempt of the authority of the Court.

26th. Because the information does not contain any sufficient or appropriate prayer.

239 27th. Because the information does not contain any sufficient or appropriate prayer for process.

28th. Because the information does not contain any sufficient or appropriate prayer for punishment.

WHEREFORE, respondent prays judgment of the Court upon the said information and that the same be quashed and dismissed and that he be not required to further demur, plead or answer thereto.

WILLIAM P. BURR,
Corporation Counsel,
240 Attorney for the Motion.

EDMOND L. MOONEY,
WM. E. C. MAYER,
Counsel for the Motion.

Stipulation of Adjournment. 241

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Plaintiff,

against

CHARLES L. CRAIG,
Defendant.

242

Owing to the illness of the defendant herein, it is herewith stipulated, subject to the approval of the court, that the proceedings herein be adjourned without prejudice to either party, until January 17, 1920, at 10:30 A. M., at Room 235 Federal Building.

Dated, New York, January 7, 1920.

WILLIAM P. BURR,
Corporation Counsel Attorney for Defendant
By Edmund L. Mooney of Counsel. 243

FRANCIS G. CAFFEY,
United States Attorney.

Agreeably with the above stipulation, it is

ORDERED that the proceedings herein be adjourned without prejudice to the time and place in said stipulation set forth.

Dated, New York, January 7, 1920.

JULIUS M. MAYER,
D. J.

244 **Exhibit D to Petition for Writ—Demurrer to Information for Contempt.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES

vs.

245 CHARLES L. CRAIG.

Comes the Respondent, Charles L. Craig, by his Counsel, Edmund L. Mooney and William E. C. Mayer, and says that the information filed and exhibited against him in this proceeding is insufficient in law.

WHEREFORE he demurs to the same and sets down and assigns against the sufficiency of said information separately and severally the following
246 enumerated grounds of demurrer, viz.:

1st. Because the information shows that the court is without jurisdiction.

2nd. Because the information shows that the court has no jurisdiction of the person of the respondent.

3rd. The information does not sufficiently inform the respondent what he is called upon to defend against.

4th. The information is insufficient in that it attempts by reference to other papers or writing to

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make a complaint or accusation against the respondent and does not embody in the information itself the recitals or parts of said other writings or papers relied upon, so as to show the respondent clearly what he is called upon to respond to.

5th. Because the information recites matters and things shown upon its face not to be within the personal knowledge of the United States Attorney, and does not aver that he charges or presents them upon information and belief.

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6th. Because the information contains averments of fact not within the personal knowledge of the United States Attorney and is not verified.

7th. Because the information is not verified.

8th. Because the information does not charge the respondent with any offense.

9th. Because the information on its face shows that the respondent is not therein charged with any misbehavior in the presence of the Court.

249

10th. Because the information shows on its face that the respondent is not charged with any misbehavior in the presence of the Court or so near thereto as to obstruct the administration of justice.

11th. Because the information does not show any contempt in the face of the Court or constructively in its presence.

12th. Because the information, when construed most strongly against the pleader, does not aver or

250 show that any publication was made by the respondent of or concerning the court.

13th. Because the information shows on its face that the letter set out therein was a privileged communication.

14th. Because the information shows that the letter therein set out and complained of was an official communication from one public official to another public official, written and dispatched of and con-
251 cerning public business.

15th. Because the information does not show that the letter therein set out and complained of was written with a view of influencing the court with respect to the decision of any matter or issue then pending before the court for decision or judicial determination.

16th. Because the averments of the information show on their face that the letter therein set out and complained of was not written for the purpose of obstructing the administration of justice.
252

17th. Because the averments of the information do not show any criticism of the Court with respect to a cogitation of the Court then in process of development.

18th. Because it does not sufficiently appear from the averments of the information that the publication of the letter set out and complained of was ever authorized by the respondent.

19th. Because it does not sufficiently appear from the averments of the information that the

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letter therein set out and complained of was ever authorized by the respondent to be published within the intent or view of obstructing the administration of justice.

20th. Because it does not sufficiently appear from the averments of the information that the letter therein copied and complained of was ever by this respondent authorized to be published with the view and intent of influencing the judicial determination or decision of the Court upon or with respect to any matter or issue then pending before 254
the court for judicial determination or decision.

21st. Because for aught that appears in the information the letter from the Respondent as Comptroller to Nixon as Commissioner was itself, as a matter of law, a public document which the respondent was powerless to suppress or withhold from publication.

22nd. Because the averments of the information are vague, uncertain and indefinite.

23rd. Because the averments of the information 255
are incomplete and unintelligible, except when assisted by other outside or collateral papers or writings, the parts of said outside papers so necessary to be referred to not being copied or set out in the information.

24th. Because the information is entirely insufficient in law.

25th. Because the averments of the information show nothing done, said, written or published by

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the respondent which calls in question or amounts in law to contempt of the authority of the Court.

26th. Because the information does not contain any sufficient or appropriate prayer.

27th. Because the information does not contain any sufficient or appropriate prayer for process.

28th. Because the information does not contain any sufficient or appropriate prayer for punish-

257 ment.

WHEREFORE, respondent prays for judgment of the Court upon the said information that the same be held insufficient, and that he be hence dismissed and not required to further answer or respond to the same.

EDMUND L. MOONEY.

WILLIAM E. C. MAYER,
Counsel for the Respondent.

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Order Overruling Demurrer. 259

At a Stated Term of the District Court of the United States for the Southern District of New York, held in the United States Courts, and Post Office Building, in the Borough of Manhattan, City, County and State of New York, on the 11th day of March, 1920.

Present—Hon. JULIUS M. MAYER, U. S. District Judge.

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UNITED STATES OF AMERICA

vs.

CHARLES L. CRAIG,
Defendant.

A demurrer having been interposed by the defendant to the information filed herein, and having duly come on to be heard, and after hearing Edmund L. Mooney, Esq., of counsel for the defendant, in support of the same, and Francis G. 261
Caffey, United States Attorney, in opposition thereto, an opinion thereon having been duly filed herein, it is

ORDERED that the said demurrer be, and the same hereby is, overruled; and it is further

ORDERED that the defendant plead to said information on Monday, March 15, 1920, at 10:30 o'clock in the forenoon of that day, in Room 331, at the United States Courts and Post Office Building, Borough of Manhattan, New York City.

JULIUS M. MAYER,
U. S. District Judge.

262 **Exhibit E to Petition for Writ—Plea of Not Guilty to Information for Contempt.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES

vs.

CHARLES L. CRAIG,
Respondent.

263

Comes the respondent, Charles L. Craig, and for answer to the information filed and exhibited against him in the proceeding, by the United States Attorney for the Southern District of New York, and to each and every of the material allegations contained therein, answering says:

FIRST.—That he is not guilty of the matters and things therein alleged.

SECOND.—That the writing and publications mentioned and described in the information were and
264 are privileged.

THIRD.—That the respondent completely denies the contempt charged in the information filed and exhibited against him in this proceeding and claims his discharge as a matter of right.

CHARLES L. CRAIG,
Respondent.

WILLIAM P. BURR,
EDMUND L. MOONEY,
WM. E. C. MAYER,
Counsel for the Respondent.

Exhibits F and G to Petition for Writ are printed at pages 821 and 838. For Exhibit H to said Petition see page 840.

Testimony and Proceedings on Contempt Trial—Craig Exhibits 1 and 2. 265

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before—Hon. JULIUS M. MAYER, J.

UNITED STATES vs. CHARLES L. CRAIG.	Order to Show Cause. 266

New York, December 2nd, 1919.

APPEARANCES:

FRANCIS G. CAFFEY, Esq., United States Attorney, for the Government.

BEN A. MATHEWS, Esq., DAVID V. CAHILL, Esq., Assistant U. S. Attorneys, of Counsel.

WILLIAM P. BURR, Esq., Corporation Counsel of The City of New York, for the Respondent. 267

EDMUND L. MOONEY, Esq., Special Counsel with Corporation Counsel of The City of New York.

The Clerk of the Court: In the matter of the information against Charles L. Craig. Charles L. Craig to the bar.

(No response.)

Mr. Mooney: If your Honor please, Charles L. Craig, the Comptroller of The City of New York, and as such a member of its Board of Estimate and Apportionment, appears specially, but not generally, to object to the jurisdiction of his person, and

268 jurisdictionally to the sufficiency for validity, substance and subject matter of the order to show cause, dated November 20th, 1919, and information annexed thereto, and files this notice of appearance specially, which is dated New York, December 2nd, 1919, subscribed by William P. Burr, Corporation Counsel of The City of New York, attorney for the defendant, appearing specially, Municipal Building, Borough of Manhattan, City of New York, by Edmund L. Mooney, special counsel with the Corporation Counsel of the City of New
269 York, and upon filing this notice of appearance, which I do with the clerk, I suggest to your Honor that the proceeding stand over for one week.

Without dilating upon the contents of the special notice of appearance, I wish to say that a very grave question is presented, among others, as to whether the Court has jurisdiction of the person of an elected officer of the State of New York. That question is one that is covered by the special notice of appearance and will be discussed with the others when the time arrives.

We have felt that in view of the necessity which
270 the law prescribes, in our opinion of presenting such a point as this in the way that we are presenting it, that an appearance by the defendant, who objects that there is no jurisdiction of his person, might and probably would waive the jurisdiction point. For that reason Mr. Craig does not appear in person before your Honor to-day, but his non-appearance is for the reasons stated, and through no want of respect for the Court.

Mr. Caffey: If the Court please, the information was filed in this case on November 13th. On the 20th day of November, a week later, an order to

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show cause was made, returnable to-day. That order to show cause was duly served upon the defendant, on the 21st of November, 1919, as appears by the return of the Marshal, endorsed upon the order to show cause. In those circumstances, the defendant not having appeared here in person, and in accordance with the requirement of the order to show cause, I ask the Court now to issue a warrant of attachment for his arrest and production in person before this Court, to answer this information.

272 The Court: If I understand Mr. Mooney's statement correctly, the failure of Mr. Craig to appear, as stated by him, is not due to any lack of respect for the Court, but due to the fact that under the advice of counsel it may be deemed as matter of law a waiver, should Mr. Craig have appeared, and that his failure to appear is in order to technically hold the point which among other things is covered by the special appearance that was read by his counsel.

On the other hand, I fully appreciate the possibility of the jurisdictional question which is sought to be safeguarded by the motion of the 273 United States Attorney, and under the circumstances I will reserve decision upon both matters, setting the point on jurisdiction, which is said to be covered by this special notice of appearance, for argument at two o'clock on December 10th in this room.

Mr. Caffey: Upon my motion, if your Honor please, for the issuance of a warrant of attachment, what action will your Honor take?

The Court: I will reserve decision.

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Mr. Caffey: Reserve decision on that motion also.

The Court: Yes. And as I understand, if any argument is to be had, both sides will be ready on Wednesday the 10th at two o'clock, which will give counsel for both sides an opportunity to examine the points raised for presentation, if necessary, to the Court.

(Whereupon an adjournment was taken to Wednesday, December 10, 1919, at 2 P. M.)

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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Before—Honorable JULIUS MAYER, U. S. D. J.

THE UNITED STATES

against

CHARLES L. CRAIG.

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Post Office Building,
N. Y., Dec. 10th, 1919, 2 P. M.

APPEARANCES.

Hon. FRANCIS G. CAFFEY, U. S. District Attorney (Ben A. Matthews, Esq., and Daniel V. Cahill, Esq., of Counsel), for the United States.

Hon. WILLIAM P. BURR, Corporation Counsel, EDMUND L. MOONEY, Esq. (W. E. C. MAYER, Esq., Assistant Corporation Counsel and Charles T. B. Rowe, Esq., of Counsel), Appearing Specially, for the Defendant.

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Mr. Mooney: If the Court please. We are here today in support of an objection raised by our special notice of appearance, and also, as I understand it, to meet a counter-application made by the District Attorney for an attachment against the person of Mr. Craig. While those questions are purely questions of law, it may not be out of place for me to restate here, and I cannot state it too often, that the absence of the Comptroller is due to no lack of respect on his part to the Court, but because having been advised by counsel in that behalf, he feels the questions which we are now 278
presenting could not be presented effectively were he to in the first place submit himself voluntarily to the jurisdiction of the Court. It is also proper to say here, with your Honor's permission, as preliminary to the discussion of these questions of law, that the Comptroller disavows now, as always, any possible intention that may be imputed to him of having been guilty of any contempt of court.

Mr. Mooney then argued in support of the motion and Mr. Caffey argued in opposition thereto.

The Court: Submit briefs on December 17th. 279

December 17, 1919. The briefs of the parties were submitted and the Court took the motion under advisement.

December 23, 1919. The Court overruled the defendant's objection and adjourned proceedings to December 29th.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES

vs.

CHARLES L. CRAIG.

281

Before—Hon. JULIUS M. MAYER, J.

New York, December 29th, 1919, 2 P. M.

APPEARANCES:

Met pursuant to adjournment.

FRANCIS G. CAFFEY, Esq., United States Attorney, for the Government.

BEN A. MATTHEWS, Esq., Assistant U. S. Attorney, of Counsel.

282 WILLIAM P. BURR, Esq., Corporation Counsel of the City of New York, for respondent.

EDMUND L. MOONEY, Esq., Special Counsel with the Corporation Counsel of the City of New York.

Mr. Mooney: If your Honor please, there has been communicated to the respondent, Mr. Craig, your Honor's decision, and I assume that that is part of the record in this case without a formal order being entered to that effect.

The Court: Oh, yes; it is on file in the Clerk's office.

283

Mr. Mooney: And the respondent wishes an exception to be entered to that.

I am instructed to say that the Comptroller, in the preservation of what he deems to be his rights feels that there is no other way of proceeding, so far as he is concerned, than to point out to your Honor that he is willing to enter a general appearance, and that your Honor's order to show cause, the exact wording of which may have been overlooked, required the Comptroller to show cause why he should not be punished for contempt, and that it did not require his personal attendance in 284
this proceeding.

The order—and I take it that your Honor wishes no extended argument upon that proposition, other than for me to point out as distinctly as I can, that the order in this case differs wholly from the ordinary order in a contempt proceeding, which requires, according to the usual forms, that the respondent shall attend in person, and in such a case it may very well be imagined that a general appearance might not be sufficient. I wish to say that in this connection the Comptroller has been so engaged, and outside of his hurried luncheon, is 285
engaged to such an extent in the performance of his duties at this season of the year, which require his constant attention, that I have had an opportunity to confer with him, but that the conference has been under the necessities of the transaction of his business.

I am saying that to you only that you may know that the compulsion upon his time is very great, although that is not in itself urged at all upon the point of either appearance or jurisdiction.

May I repeat again, because it cannot too often be repeated, and I hope that it will be taken at its

286 fullest value, that it is through no want of respect for the Court that the Comptroller does not appear, but because, he instructs me to say, that he feels in doing so he would be waiving some of his substantial rights.

The Court: I do not quite get what you said in the beginning or early in your remarks to the Court. Do I understand if the Court were to amend the phraseology of the order, limiting it to a requirement on the Comptroller to appear, that he would then interpose a general appearance?

287 Mr. Mooney: We offer to do that now, your Honor, and I am instructed to appear for him generally, and I do so gladly, because we have taken our exception to your Honor's ruling.

The Court: I see.

Mr. Mooney: And it is with a view of facilitating this proceeding, instead of obstructing it, that I have been instructed to make the general appearance.

The Court: I understand then the Comptroller now does enter a general appearance?

Mr. Mooney: Does enter a general appearance.

288 The Court: You having saved your rights by the exception.

Mr. Mooney: Yes, sir. And I do wish at this time, if I may anticipate something that my learned friend, the District Attorney, may say on the other side, I do wish to point out that the authorities are uniform, so far as I am able to read them aright, that it is only in cases of flagrant misbehavior that the Court ever reaches out in advance by attachment. The learned District Attorney took the position a little while ago that he might be waiving some point or that there might not be

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a complete jurisdiction if the defendant were not personally brought into court. May I, with the greatest deference to his opinion in that respect, say that such is not my understanding of the authorities, and that it is not necessary in any case that the defendant be brought physically to the bar of the court, but only that he do show cause.

Now, may I say a word in addition to that, your Honor. In your opinion you have expressed yourself with so much moderation on the subject of the demurrer or plea, that this question of privilege may be asserted then, I thought that as this is a 290
question of law, we might be allowed to discuss that upon a general appearance with a due regard to the public exigencies which are not at all exaggerated by me, and that the case proceed in that way rather than in any other way. I feel that much good might be accomplished in that manner.

The Court: My suggestion is this: the general appearance that you have just entered seems to me to clear the situation very much, indeed. I do not know what view the United States Attorney may have as to the law involved, and if he has any suggestions after I shall have finished, I shall be glad 291
to hear them.

The Comptroller now having interposed a general appearance, the merits of the case, whether they may be of law or fact, as the argument may develop, are before the Court. The defendant having reserved and protected himself as against the ruling of the Court acquired an appearance. I fully realize that this week was a very busy week with the defendant, and I have no desire to inconvenience him at all in the performance of his public duties during this period. But I should like, and I think it is rather due to the Court, without going

292 into the technique at all, as a matter of respect to the Court, at some day that we may agree upon now, that he appear before the Court next week, and after thus showing what I think is the respect due from at least a lawyer to the Court, the Court has no desire to detain him physically from his duties; and upon that occasion, then, you and the District Attorney can argue any and all questions of law that you may be advised.

I tried to make it clear—I hope I have—that I have not yet decided to question of privilege as
293 affects that part of the information which you urge refers to an official act as distinguished from the unofficial. Now, it does seem to me that the defendant should appear in person in order to show that respect to the Court which I think is the just due of the Court.

Mr. Mooney: I appreciate very much what your Honor has said. Your Honor realizes, I am quite sure, that I am proceeding under instructions, as it is the duty of a lawyer to do in such a position as this, and that what I have said as to the public engagements of the Comptroller is merely said by
294 the way, and is said as an indication of the fact that he is thus engaged. The instructions which I have at the present time would not be broad enough to allow the statement or the inference that at a later date the Comptroller would feel that he could personally appear without waiving his points. Your Honor, of course, will realize that in my position as an advocate, and as a member of this bar, it is my wish and my desire that the matter shall proceed not only conformably to the practice, but with the highest regard for the respect which every man in the community owes to the Court. I

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do not want anyone to feel, however, that I can today go beyond the instructions which I have received and have announced. I feel that the proceeding could go on, based upon the general appearance.

Mr. Caffey: If the Court please, it is entirely agreeable to me, and it seems to me, considerate of the public interests, that a later date be set for the physical appearance of the defendant; but that in no circumstances should the case proceed without the physical appearance in court of the defendant.

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It is inconceivable to me, in a matter of contempt, that the defendant shall be heard by counsel without coming before the Court. Without arguing it at the moment, I adhere still to the view that the process set in motion by the order to show cause should be continued under consideration by the Court until there is an appearance physically here by the defendant, or the motion which your Honor now has under consideration, made by the Government, for the issuance of a body attachment is determined.

297

Now, to meet the convenience of the situation, I think your Honor's suggestion is not only an appropriate one, but a wise one, that a future date be set for the physical appearance of the defendant, and it is quite agreeable to me, if it meets with your Honor's approval, that you hold under advisement until that date the motion I have already made for a body attachment; but it does not seem to me conformable at all with the practice, with the requirements of the situation, or with the essential nature of a contempt proceeding, that it proceed until after there has been a physical appearance in court of the defendant.

298 Mr. Mooney: With respect to the latter, your Honor, without desiring at all to be contentious, I appreciate what the learned District Attorney has said, but there is no requirement for the personal appearance of the defendant in such a proceeding as this; and, in fact, all the English authorities where the question has come up as it has here, hold that the attachment does not issue until some contumacy following on the heels of the alleged contempt has been shown, and there counsel is always heard upon the rule to show cause. Nor
299 is that hearing accompanied, so far as the books disclose, by any physical appearance of the defendant. It is only where there is something contumacious. Now, in this case, without branching off at all into its higher reaches, is it not a matter of substantial interest to all concerned that the very important question of the underlying privilege be determined upon a motion to quash and upon a demurrer before we get to any other question? In no sense does a contempt proceeding depend upon the physical appearance of the defendant.

300 The Court: Well, I have never heard of a contempt proceeding where the defendant has not appeared; I have no familiarity with any such proceeding. The method, which is well settled, is to issue an attachment of the body. Now, in this district, as I pointed out, and as is familiar to you, that method is avoided wherever possible; and the United States Attorney, in conformity with an agreeable practice, either notifies the person concerned or applies to the Court for an order to show cause. Now in this instance the Court issued an order to show cause. It may be it was in the same

form as the Court issued another order to show cause concerning contempt; whether the exact language is open to debate or not is another question. The Court had no thought, in the nature of the language, which I think, but I am not sure, was taken from some reported case—the Court had no thought of using any than what might be called routine language. But the Court could have issued this attachment. Now instead of that the Court proceeded with, one might say, the pleasanter method, and the defendant failed to appear in order to make his point as to jurisdiction; and, as stated in the Court's memorandum, that failure to appear was received by the Court in good faith, the Court having no reason to doubt the correctness of the statement made by counsel in that regard.

Now, the Court has overruled that, and the Court does not desire upon this point any question of jurisdiction to arise hereafter. The Court is satisfied that in accordance with settled practice the defendant must appear. Now he may appear without any further process or the Court must issue its process.

Now, as you are evidently not in a position to decide that point, in view of the fact that you come here apparently to interpose a general appearance, without being clear as to the authority of your client, the disposition I shall make is this: I will set this case down for hearing on Wednesday, the 7th of January, in order to not interfere in any manner with the duties of the defendant during the closing days of the year. At that hour and time I will issue a body attachment forthwith unless at that time the defendant appears in this court room, pursuant to the Court's suggestion.

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Mr. Caffey: Your Honor did not include in your statement an hour upon that date.

The Court: At two o'clock in the afternoon in this room. Now I do not want to be called on to issue the attachment. I do not see that it is necessary at all; I do not see that anybody gains by that procedure. But it is the position into which the defendant forces the Court in order that the Court may be certain there is no question of jurisdiction, because the point may be raised hereafter, and not by yourselves, but by some other
305 counsel, that this general appearance has not brought the defendant into the jurisdiction of the Court. I do not want that point outstanding, because whatever decision there is, I want to have it on the law of the case or the facts, if there should be occasion to reach the facts; on the real merits of the case. If the information laid before the Court is one which is open to disposition by virtue of questions of law, interesting questions which you have raised, the Court of course will give those questions its very careful consideration; if it is open to, judging from your remarks the
306 other day, some explanations as to the facts, if we should get to the facts, very well; the Court will be glad to hear any explanation. But I do not see that the defendant is losing any technical point of any kind or description by appearing. I prefer to leave it in the same position in which I placed it at the beginning of what I said today: to put it in the shape of preferring that the defendant appear, in view of the fact that he has filed through you a general appearance. However, if he has another point of view, then the Court must proceed along what it deems may be necessary jurisdictional lines.

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Mr. Mooney: May I say, as to the point of the appearance, your Honor, that we are prepared to file with the Court a motion to quash, and if that be overruled, a demurrer, so that there would be no question but what the respondent had made a general appearance and submitted himself, subject to his exception, to the jurisdiction of the Court; and further might I say, as suggested by my associate here, that while this Court is not at all controlled by the practice which exists in the State courts in this community, that it is not, I believe, within the experience of any man that a 308
proceeding by or for punishment for contempt has ever been initiated otherwise nor responded to otherwise than by the presentation and filing of papers, and I have not found in this United States jurisdiction, a single case where the Court has proceeded in the first instance by attachment. I call to your Honor's mind a decision of Judge Rogers in the Weekes case, with which my learned friend I know is familiar because we have discussed it, in which he lays down the rule definitely that a general appearance by the defendant waives certain defects and so forth and so forth, indicat- 309
ing that in that case the general appearance was all that was necessary to confer jurisdiction.

The Court: That was in regard to papers that were seized.

Mr. Mooney: I realize that there is no case so far, at least, that I have been able to discover, that is directly in point in this instance, but this is the thought that I wish, if your Honor's mind is not fully made up on the subject, to submit for your consideration: I feel that in view of the fact that the alleged contempt here grows out of what

310 the defendant wrongfully or otherwise conceives to be the performance of a public duty, it is not the Court's intention to proceed with peculiar hardship.

The Court: Of course that has been demonstrated, because the Court issued an order to show cause at the very beginning.

Mr. Mooney: That is what I had in mind. Now if your Honor's intention is not to proceed with the case as one of peculiar hardship, why would it not be sufficient to proceed upon the general ap-
311 pearance such as is done in a multitude of cases. I doubt whether your Honor has in more than one instance in your experience, and I am fairly familiar with what goes on in these courts—I doubt whether in more than one instance you have had the physical presence before the Court of the person charged with the contempt. It is the universal custom in this community, as I understand it, and so far as my observation goes, outside of the printed books, that a person responds and shows cause by counsel.

The Court: I do not think that that is correct,
312 excepting in regard to a proceeding which arises out of the disobedience of an order. Very often those proceedings are the result of error or difference of opinion in the course of a judicial proceeding. Very often in those cases it is merely, as it were, a battle between the lawyers. But in this case the defendant is charged with violating a provision of the judicial code, which goes upon the theory that in law the contempt was committed in the presence of the Court. If the contempt was committed, in point of fact, in the presence of the Court, physically speaking, the Court would at once insist that the defendant in person be brought

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to the bar of the Court; but in this case, as in the Toledo case, the charge against the defendant is the commission of a contempt of the Court in the presence of the Court, as a matter of law, but physically outside of the court house or the Court environments; but the principle is the same. It is not, to repeat myself, that the contempt arises because a person disobeys an injunction order, perhaps not understanding the order, or placing a different construction upon the order from what the charge against him consists; but it is the class which is covered by the specific section to which I 314
have referred, which has been referred to as the Act of 1831; and I am quite sure that it requires the appearance of the defendant against whom the information is laid. Now, he may at the moment he appears, reiterate through counsel all of the safeguarding points that counsel has already stated. It is not the Court's purpose to in any way make of any less value, if it has any value, the point of special appearance as distinguished from general appearance. But this whole proceeding, I assume, is laid before the Court by the United States Attorney solely from the standpoint of the 315
dignity of the Court, speaking as personally as the Court can speak, and by that same token thinks it its duty to require the personal appearance of the defendant; and on that the Court firmly insists; and the Court is strongly convinced that that is its duty to the administration of justice and to the Court itself. And therefore, to repeat myself, recognizing that the defendant, as stated by counsel, is doubtless very busy with the official matters that come upon the closing days of the year, and recognizing also that perhaps counsel has not had the fullest opportunity to confer with the defend

316 ant upon this or other points, the Court has named a definite date, namely, the 7th of January, at two o'clock in this room, and the defendant and his counsel must then determine whether he shall appear as directed by the Court, or requested by the Court—I am not particular which way it is put—or whether he shall not appear. I should prefer to leave it in the position of an indication to the defendant what the Court thinks, especially as he is a member of the bar, and he at least owes it the duty and respect to appear, while at the same
317 time reasserting his rights that his appearance is not to be understood as in any way waiving any rights. Further than that I do not think I can go into circumstances.

Mr. Mooney: May I then, for the purpose of preserving a point on the record—may we except to that ruling because there are certain elements in your Honor's very considerate remarks that might seem to appiy to the question of personal convenience; and as I have said before—

The Court: Oh, no; I will relieve you of any embarrassment there. I do not take your question of
318 personal convenience as asking the Court for an adjournment or anything of that sort; I do not intend that auy rights the defendant shall have shall be jeopardized by any incidental statement which may be misconstrued. I understand that your reference to personal convenience, so far as this week is concerned, is quite irrelevant to the record, and does not in any way indicate that you accede to the Court's view of the law, and the Court has received such statements from you as counsel very properly advising the Court of the engagements of the defendant, who, in addition to being an individual person, is also a public official who is at the

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moment, as the Court of course knows, very busily concerned with the affairs of his office, as is usually the case in the closing days of the fiscal year.

Mr. Mooney: May we proffer for the record—I realize that it will go no further than that in view of your Honor's ruling—the motion to quash and the demurrer.

The Court: Yes, that may be proffered, and the Court will say that it will hear that motion and entertain the demurrer and argument upon both that motion and demurrer when and if the defendant shall have first personally appeared.

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Mr. Mooney: And to that latter part we except. Will you put a mark on them to identify them, Mr. Clerk?

The Clerk: I will take these upstairs and file them.

Mr. Mooney: I do not know that the Court will want them filed. He may only wish a mark on them to identify them. He may not think it proper to have them filed.

The Court: I do not care. They may be filed.

Mr. Mooney: I will see that your Honor's rulings are conveyed to the Comptroller.

321

The Court: I may say, in the meantime, that if I look over these documents—

Mr. Mooney: Yes, but please don't make up your mind until you have heard counsel.

The Court: Well, then, I won't look at them. Then the clerk will note an adjournment until January 7th in this room at two o'clock P. M.

(Whereupon an adjournment was taken to Wednesday, January 7th, 1920, at 2 o'clock P. M.)

New York, January 7th, 1920.

Adjourned to January 17th, 1920.

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UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

vs.

CHARLES L. CRAIG.

323

Before—Hon. JULIUS M. MAYER, J.

New York, January 17, 1920.

Met pursuant to adjournment.

APPEARANCES:

FRANCIS G. CAFFEY, Esq., United States Attorney for the Government (Ben A. Matthews, Esq., and David V. Cahill, Esq., Assistant U. S. Attorneys, of Counsel).

324 WILLIAM P. BURR, Esq., Corporation Counsel of The City of New York, for the Respondent (Mr. Mayer, Assistant Corporation Counsel), and

EDMUND L. MOONEY, Esq., Special Counsel with the Corporation Counsel of The City of New York.

CHARLES L. CRAIG, Esq. (in person).

Mr. Mooney: If the Court please. Referring to the record at page 76, a transcript of which I have in my hand, your Honor ruled as follows:

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"At that hour and time (meaning the hour and time to which the proceeding was adjourned, and from which it has been adjourned to the present day) I will issue a body attachment forthwith unless at that time the defendant appears in this courtroom, pursuant to the Court's suggestion."

In view of that ruling the defendant being powerless to resist the process of the Court, reserving his objection and his exception, has appeared in person this morning, and now is present 326
in court. Will it be proper at this stage to take up the discussion of the motion to quash?

The Court: The Court will call upon the defendant to plead, at which point you may interpose a demurrer or whatever it is, and then the plea of the defendant will be deferred until those matters are disposed of.

The Clerk: Charles L. Craig, you stand charged with contempt of court and violation of Section 268 of the Judicial Code. How do you plead, guilty or not guilty?

Mr. Mooney: Before pleading, we wish to be 327
heard upon the motion to quash, which we have filed.

The Court: That is entirely proper.

Mr. Cahill: If the Court please, in a matter of this kind, it is usual to have bail fixed upon the arraignment, and we now rise upon that point and suggest that the defendant be released upon his own recognizance or in the custody of his own counsel.

The Court: He is released on his own recognizance. No bail at all will be required.

328 Mr. Mooney: I hope that your Honor's observation before I had an opportunity to rise upon my feet is not a definite ruling, because I have something to say upon the subject. May I consider that the question is open?

The Court: Certainly.

Mr. Mooney: I quite realize that the Court spoke in answer to the request of the learned District Attorney, which seems to be the spirit of courtesy. We are not here in an attitude of asking for courtesy. While we appreciate it, we do not ask it, and
329 I want to say that the learned District Attorney,—I want to say it in a most definite way,—is entirely outside of any procedure that is known to this Court in pursuit of a contempt proceeding.

The Court: I do not think we need be concerned about it. I can entirely disregard the point to which the District Attorney referred. The defendant has appeared; you have reserved your special appearance so far as it is possible for you to reserve your special appearance, and we will consider the question of recognizance practically wiped from the record.

330 Mr. Mooney: If that is so, I need not be contentious about it. This is a contempt proceeding in sui generis, and is in the nature of a criminal proceeding, but if the attorney has any idea that the Comptroller of the City of New York is to be subject to such law that he has handed down, and is handed out to felons, he is very much mistaken.

The Court: I don't think there is any occasion to do more than to say that the defendant has appeared. You have interposed your motion, and you will have an opportunity to be heard upon the motion to quash. As far as this Court is concerned, the defendant has now complied with

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the Court's direction, and it is for him to determine for himself, as far as I am concerned, whether he shall be present hereafter until such time as I ask him to be present. He may govern his actions so far as the Court is concerned, as pleases himself in the necessary performance of his public duties or his private affairs. I have no desire for his presence until such time as I shall require his presence.

Mr. Mooney: Now, Mr. Clerk, will you kindly hand me for convenience, the motion before the Court? (Clerk hands papers to Mr. Mooney.) 332

Mr. Mooney: If you Honor please, we move to quash and dismiss the proceeding on the ground that the Court has no jurisdiction over the respondent to proceed herein, and on the ground that the information on its face shows that he should not be further held to plead or answer thereto, and for separate and several grounds of this motion and for special causes why the quashal and dismissal prayed for should be allowed and entered, he sets down and assigns separately and severally the following, which counsel now proceeds to present to the Court for consideration in each and every 333 respect:

1st. The Court is without jurisdiction.

2nd. The Court has no jurisdiction of the person of the respondent.

3rd. The information does not sufficiently inform the respondent what he is called upon to defend against.

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4th. The information is insufficient in that it attempts by reference to other papers or writings to make a complaint or accusation against the respondent and does not embody in the information itself the recitals or parts of said other writings or papers relied upon, so as to show the respondent clearly what he is called upon to respond to.

5th. Because the information recites matters and things shown upon its face not to be within the personal knowledge of the United State At-
335 torney, and does not aver that he charges or presents them upon information and belief.

6th. Because the information contains averments of fact not within the personal knowledge of the United States Attorney and is not verified.

7th. Because the information is not verified.

8th. Because the information does not charge the respondent with any offense.

336 9th. Because the information on its face shows that the respondent is not therein charged with any misbehavior in the presence of the Court.

10th. Because the information shows on its face that the respondent is not charged with any misbehavior in the presence of the Court or so near thereto as to obstruct the administration of justice.

11th. Because the information does not show any contempt in the face of the Court or constructively in its presence.

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12th. Because the information, when construed most strongly against the pleader, does not aver or show that any publication was made by the respondent of or concerning the Court; and in this connection, counsel urges that there is no averment or allegation in the information that the publication alleged therein to have been made was either wilfully, knowingly, unlawfully or contemptuously made, as is alleged in the same information with respect to the writing thereof.

13th. Because the information shows on its face 338
that the letter set out therein was a privileged communication.

14th. Because the information shows that the letter therein set out and complained of was an official communication from one public official to another public official, written and dispatched of and concerning public business.

15th. Because the information does not show that the letter therein set out and complained of was written with a view of influencing the Court 339
with respect to the decision of any matter or issue then pending before the Court for decision or judicial determination.

16th. Because the averments of the information show on their face that the letter therein set out and complained of was not written for the purpose of obstructing the administration of justice.

17th. Because the averments of the information do not show any criticism of the Court with re

340 spect to a cogitation of the Court then in process of development.

18th. Because it does not sufficiently appear from the averments of the information that the publication of the letter set out and complained of was ever authorized by the respondent. At this point, namely, the 18th, it is well for me to urge again what I have already said with respect to the absence of any allegation that the publication was contemptuously, wilfully, knowingly or unlawfully
341 made as alleged.

19th. Because it does not sufficiently appear from the averments of the information that the letter therein set out and complained of was ever authorized by the respondent to be published with the intent of view of obstructing the administration of justice.

20th. Because it does not sufficiently appear from the averments of the information that the letter therein copied and complained of was ever by
342 this respondent authorized to be published with the view and intent of influencing the judicial determination or decision of the Court upon or with respect to any matter or issue then pending before the Court for judicial determination or decision.

21st. Because for aught that appears in the information the letter from the respondent as Comptroller to Nixon as Commissioner was itself, as a matter of law, a public document which the respondent was powerless to suppress or withhold from publication.

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22nd. Because the averments of the information are vague, uncertain and indefinite.

23rd. Because the averments of the information are incomplete and unintelligible, except when assisted by other outside or collateral papers or writings, the parts of said outside papers so necessary to be referred to not being copied or set out in the information.

24th. Because the information is entirely insufficient in law.

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25th. Because the averments of the information show nothing done, said, written or published by the respondent, which calls in question or amounts in law to contempt of the authority of the Court.

26th. Because the information does not contain any sufficient or appropriate prayer.

27th. Because the information does not contain any sufficient or appropriate prayer for process.

28th. Because the information does not contain any sufficient or appropriate prayer for punishment.

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Now, the grounds that we have presented to your Honor in support of our motion, are in the view of myself and my associates, presented in such succinct and definite way that elaboration thereof by oral argument would probably not assist the Court. In other words, there is no use of piling words upon words, and under the circumstances unless some indication is made to the con

346 trary, we will confine our argument to what has already been said in support of that motion.

Mr. Cahill: If the Court please, the motion to quash and the demurrer contain precisely the same grounds, and I assume we may argue them together.

The Court: Has the demurrer been filed also?

Mr. Cahill: Yes, your Honor.

Mr. Mooney: Just let us put it this way. The demurrer was proffered, but it has not yet been made a part of the procedure. I wish to be quite
347 technically correct, and therefore I am proceeding this morning to present and argue my motion to quash. When that has been done, if the proceedings are not quashed, I shall then ask to interpose the demurrer in regular and orderly form.

You see, the reason that my learned friend has knowledge of my demurrer is that in the other proceeding where it had reached the state where the Court was considering the question of the non-attendance of the Comptroller, it was deemed wise and proper to proffer the papers in his absence to indicate to the Court that there was something for
348 consideration, but they have not been presented in such form as to make them part of the record, except when I bring on my motion to quash, and if your Honor passes unfavorably upon that, then, and then only, will the demurrer be made a part of the record and we will proceed.

So far as I am able, I wish to guard the interests of the defendant or respondent, and while I am not entirely familiar with criminal procedure, I wish to do so at every stage, and if I fail to do so, it will be through lack of knowledge or experience rather than with any thought or idea of waiving, in the slightest particular, any of his rights.

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Mr. Cahill then argued in opposition to the motion to quash, and Mr. Matthews made the closing argument in opposition thereto.

The Court: Have you anything to say Mr. Mooney?

Mr. Mooney: I have nothing to say, your Honor, unless there be some point upon which your Honor wishes the matter to be further elucidated.

The Court: Now, the demurrer, if it were to be interposed, would bring up many of these questions upon the motion to quash, wouldn't it?

Mr. Matthews: All of them; the grounds of the 350
demurrer are, word for word, in the motion to quash. I am right in that, am I not, Mr. Mooney? The only difference is in the phraseology and the preamble in the grounds, the one setting forth language making it a motion to quash, and the other language making it a demurrer.

Mr. Mooney: We don't want to be confused about that, because while the sub-stratum is identical, a motion to quash, according to the cases, goes to the manner and form, whereas the demurrer will go to matters of substance. If I catch what is running through your Honor's mind, per- 351
haps you have in mind the withholding of your decision and the reserving of your decision on the motion to quash while you hear the demurrer; is that what I glean from your question?

The Court: Well, either that, or I shall dispose of the motion to quash and then take the demurer under advisement, because I think the demurrer raises the substantial questions in the case, whereas the motion to quash you said, I think, somewhat aptly, is directed not only to what would be contained in the demurrer, but rather to questions of form, such as whether the information should

352 be sworn to and so on. My theory of the thing was to deny the motion to quash, and then take the demurrer under advisement, because there are some questions raised in the demurrer which I think need careful study. I desired to make it clear in my previous memorandum that I did not pass at all upon the questions that were denominated by Mr. Mooney as questions of political privilege, which in a sense, I think is raised for the first time in a contempt proceeding, applying to a situation of this particular character. That question
353 will not only affect this case, but perhaps as being concerned from the standpoint of the question of law,—whatever becomes of it, is a question that is worthy of careful study and consideration, and there may be some other questions, but I think the dominant question, as I understand it, which is unrelated in a sense to what construction would be put upon the letter which the defendant is charged with having sent, is the question in the demurrer, which I assume for the purpose of the argument, and only for the purpose of the argument, the construction placed on the letter by the United States
354 Attorney. You then say that the defendant was privileged in that regard so far as the communication by him to another public officer is concerned. So, I will deny the motion to quash and if Mr. Mooney now interposes the demurrer, I will take the demurrer under advisement, and either—

Mr. Mooney: We wish to be heard on the demurrer, your Honor.

The Court: You mean you wish to be orally heard?

Mr. Mooney: Without any intent to interrupt your Honor, we wish to except to the overruling of

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the motion to quash, and we wish to be heard orally on the demurrer, and we are ready to argue that, if your Honor will allow us to do so. I certainly would be willing to go on now.

The Court: I would be glad to hear you both orally because I would like to hear that carefully and I would rather hear it on another date on account of some official matters this morning, and I can make the date whatever would be convenient to the United States Attorney and yourself.

Mr. Mooney: If we might have next Saturday morning, then we would be sure of not having any 356
trial engagements interfere with it.

Mr. Caffey: That is agreeable.

The Court: Is that agreeable to you Mr. Matthews?

Mr. Matthews: Yes.

The Court: That's very good. Suppose we have the argument on the demurrer at 10:30 and have it, if you will, at the court room adjoining my chambers in the Woolworth Building. It will be a little more comfortable, and I will endeavor to arrange no other engagements so I can give both sides all the time necessary, because I am quite 357
frank to say that I want to go into some of the points raised with considerable care, and we will adjourn until a week from today at 10:30, and hear it in the Court room adjoining my chambers.

(Whereupon an adjournment was taken to Saturday, January 24th, 1920, at 10:30 A. M. In the Woolworth Building.)

New York, January 24th, 1920.

Adjourned to January 31st, 1920.

358

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before—Hon. JULIUS M. MAYER, J.

UNITED STATES OF AMERICA

vs.

CHARLES L. CRAIG.

359

In Chambers,
Woolworth Building, N. Y. City.
January 31st, 1920, 10:30 A. M.

APPEARANCES:

COL. CAFFEY (Mr. Matthews, Asst. District Attorney), for U. S.

HON. WILLIAM P. BURR, Corporation Counsel (Mr. Mayer, Asst. Corporation Counsel).

EDMUND L. MOONEY, Esq., Special Counsel (Mr. Cruikshank, of counsel), for the defendant.

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ARGUMENT ON THE DEMURRER.

Mr. Mooney: Upon this demurrer, the primary point for discussion is, and would ordinarily be, that of privilege, but inasmuch as the subject of privilege has been discussed at length in one of its aspects upon the motion with regard to a special appearance, it has seemed prudent to us to present in the following order, the arguments for consideration this morning:

FIRST.—That there is no contempt in substance, which we will proceed to demonstrate by dissecting

the communication, or alleged contemptuous writing. 361

SECOND.—That there is no contempt, because the subject matter of the criticism was not then pending *sub judici.*

THIRD.—That there was no misbehavior within the meaning of the statute. This subject, I may say, in passing, is closely related to that of privilege.

FOURTH.—The subject of privilege with respect to the subject matter; and

FIFTH.—That there was no contemptuous publi- 362
cation.

Now, up to the present time there has been no oral consideration or discussion of the communication which is set forth in the information, and upon which the alleged contempt is based, and it has been assumed in orderly procedure, for the sake of discussion, that that matter might be passed. I have felt from the beginning, and feel stronger every day that it might have been better if the orderly procedure had allowed it, that this communication might be considered and weighed and dissected at the earliest opportunity, because 363
both my associates and myself have been impressed from the start that only by a misconception of this writing could there be the slightest thought of contempt.

I shall proceed to review it from the standpoint of demonstrating that it does not contain any contemptuous reference to the Court, and that it is only by a hurried, a cursory reading of the communication that it may be said to contain anything which could be offensive beyond the lines of just criticism.

The Court: Exchange briefs by February 9th and submit briefs on February 14th.

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New York, February 14, 1920.

Briefs submitted and decision reserved.

New York, March 9, 1920.

The Court overruled the demurrer and fixed March 15, 1920, as the time to plead to the information (see 266 Federal Reports, 230). Defendant excepted.

New York, March 15, 1920.

365 Defendant filed a plea of not guilty and the Court adjourned the proceedings to March 17th.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA

against

CHARLES L. CRAIG.

366

Before—Hon. JULIUS M. MAYER, Judge.

New York City, March 17, 1920;
2 P. M.

APPEARANCES:

Hon. WILLIAM P. BURR, Corporation Counsel of The City of New York, by Edmund L. Mooney, Esq., Special Counsel, for the Defendant.

B. A. MATTHEWS, Esq., Assistant United States Attorney, for the Complainant.

The Court: I will take up the motion for a bill of particulars in The United States against Craig. I believe the District Attorney was to let counsel

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and the Court know what disposition he had toward the matter.

Mr. Matthews: If the Court please, this matter comes up again to-day on a motion notice of which the United States Attorney received last Saturday, on March 13th, 1920. The notice of motion indicates that a bill of particulars of the following items referred to in the information in the following language will be moved for. I now quote from the Information; and I read from the notice of motion: "The hearings, notices, petitions, orders, minutes, papers and dockets in each of said suits 368
and in said proceeding, all of which are on file in this Court are by reference hereto"—I think that should be "thereto"—No, "are by reference hereto annexed and made part hereof." Then the motion specifies, in Items A to G inclusive, the parts that are required or requested. The United States Attorney interposes no objection to an order directing that these particulars be furnished; and we will prepare a bill giving the particulars requested as soon as it can be gotten up. How long that will take I am unable to say until I have gotten a little further along with the work of preparing it. I 369
should like, however, to reserve the right to furnish supplemental or additional bills of particulars after I shall have served the first one. I expect to make it include everything; but the record is very voluminous, and I would like to have the Government's rights safeguarded by this suggestion which I am now making. I think we can have the bill of particulars completed by one week from to-day.

Mr. Mooney: I assume that the reservation which counsel suggests, and which is really quite proper in every litigation, should be adopted here, with the proviso, however, that he will apply to

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Your Honor for leave to serve any additional bill of particulars that he deems that he should. Of course I would not want to feel that he could serve those at random.

The Court: Yes, there will be no trouble about that. To-day is the 17th. How many days after the bill, Mr. Mooney, would you want before the trial?

Mr. Mooney: Well, I should like to be able to express myself on that point, your Honor; but the division of labor in connection with the preparation
371 here has been such that I have not been able to apply myself to the particular branch of the case which the making of this bill will open up. That is to say, my associates have drawn certain conclusions and have informed me with respect to their conclusions, as to what they deem a mass of material which will be sifted out now by this bill; and I have thought, under those circumstances that the most useful way that I can apply myself to the matter would be to wait until I saw the bill. Now that does not mean by any means that I shall not be going ahead; but I would be wading through
372 a great mass of material in anticipation of that part of the case. Would your Honor deem it wise and prudent to leave open that question until we have seen the bill?

The Court: Suppose I do this: Suppose I give Mr. Matthews—this is the 17th. I know he is very much crowded, as crowded as you are. Let him serve the bill on the 26th of March, which is Friday; and you want to prepare an order with a reservation of leave to apply to the Court to furnish it further?

Mr. Matthews: Yes.

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The Court: And it will be the understanding that the trial will occur at least ten days after the service of the last bill of particulars; and in order to keep the matter in regular form, I will set April 13th at 2 o'clock in the afternoon for the commencement of the trial.

Mr. Mooney: Yes.

The Court: With the understanding that if by Friday the 9th of April, which is the preceding Friday, upon arrangement between counsel for the Government and counsel for the defendant, application is made, I will fix a date further along, 374
should either of you be professionally so circumstanced or by reason of some unexpected personal matters, to a date which will be convenient.

Mr. Mooney: May I make this suggestion, which I think will faciliate the trial very much and probably shorten it very considerably, that after the Government has put in its case an adjournment be taken of such length, either brief or otherwise as your Honor deems best according to the requirements of your Honor's calendar and engagements, before the putting in of the defendant's case. That is to say, I believe that in the close of the Govern- 375
ment's case if, as now appears, it will necessary for the defendant to put in his proofs, because your Honor has ruled upon many if not all of the points of law which tend to indicate that the defendant will be required to put in his case upon the facts,—having that in view, a short adjournment between the closing of the Government's case, if that is agreeable to my learned adversary and to the Court, would, I am quite sure, facilitate the presentation of the whole matter.

The Court: That meets my disposition to so do; but I don't care to rule on that now. I will say

376 that there will be no trouble about the amendatories. There is just one practical point which has occurred to me; I do not know whether it has been thought of by Mr. Matthews or yourself. I think it would save a considerable amount of unnecessary physical labor if the Government could refer to the printed volumes in so far as those printed volumes contain any of the papers on which the Government may rely. Have you a copy of the volume?

Mr. Mooney: No.

377 The Court: I mean the printed volume of the receivership.

Mr. Mooney: No.

Mr. Matthews: They are all, I think, in the possession of the Corporation Counsel. I had expected, in preparing my bill of particulars, to make reference to the documents which have been printed and thereby save copying them bodily into the bill of particulars. I will see to it that a copy of the printed record to which reference is made is at the disposal of the attorneys for the defendant.

Mr. Mooney: I should, as a matter of mechanics,
378 be very glad if the learned District Attorney would furnish me personally with a copy of the record so that I may work at it in my own library. There will be no difficulty about that. I presume there are additional copies, and it is not convenient for me personally to go to the Corporation Counsel's office and to work upon the record there.

Mr. Matthews: I think there will be no difficulty whatever about that.

The Court: If you should be short a copy just let me know about it, and I will either see if there is a copy available or, if not, while I need it from time to time, I will be willing to lend my own copy to Mr. Mooney.

Mr. Mooney: Your Honor might not like perhaps the markings that I imagine I might make on the margin; although I am quite sure that there will be nothing there but what would lead to your favorable consideration, yet they may be of an intimate nature which may be such that you would not care to have them on your copy. 379

The Court: I will give you the Court's copy, but if it should be back some day it might be filed in the Court's personal archives as a most agreeable reminiscence.

Mr. Matthews: I may loan Mr. Mooney my copy.

The Court: There will be no trouble about that. Then for purpose of orderly procedure we will set the matter down for April 13th at two, to be changed, if at all, by an understanding on or before the 9th of April. 380

Mr. Matthews: So far as I can tell now I think the Government, unless due to personal engagements of myself and other Government business, will probably be ready to proceed on that day.

The Court: Very good.

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382

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES

vs.

CHARLES L. CRAIG.

New York, April 12th, 1920.

383

Mr. Mooney: I have been communicated with by the Comptroller who tells me that tomorrow afternoon he is required by his official duties to be present on the hearing of a bill in Albany concerning himself and the other officers of the Administration and that he will be required to attend on a number of hearings in connection with legislative matters in which the City is interested, during the remainder of the legislative session which has been tentatively fixed to continue until the 24th inst. Under the circumstances I apply for such adjournment as appears reasonable to the Court.

384

Mr. Matthews: I am agreeable, in the circumstances, to any date the Court may set.

The Court: In view of the statement of counsel for the Comptroller in respect of the necessity of the Comptroller giving his time to legislative matters affecting the City, I shall grant an adjournment until April 27th at 2 P. M. If for any reason of a public character a further adjournment is desired, counsel will please let me know some time during the week ending April 24th.

New York, April 27th, 1920.

Trial adjourned to May 10th, 1920.

385

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before—Hon. JULIUS M. MAYER, U. S. D. J.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHARLES L. CRAIG,
Defendant.

386

New York, N. Y., May 10, 1920.
Two o'clock P. M.

APPEARANCES:

For the Government: FRANCIS G. CAFFEY, Esq., United States Attorney; BEN A. MATTHEWS, Esq., Assistant United States Attorney.

For the Defendant: WILLIAM P. BURR, Esq., Attorney for Defendant; Edmund L. Mooney, Esq., Russell Tarbox, Esq., Charles T. B. Rowe, Esq., and Eli S. Wolbarst, Esq., of Counsel for Defendant.

387

Mr. Matthews: If your Honor please, I move the trial of the case of the United States against Charles L. Craig on the calendar to-day.

The Court: Very good.

Mr. Mooney: Enter the appearance of Mr. Tarbox in place of Mr. Mayer, one of the counsel for the defendant.

388

Mr. Matthews: I think it is unnecessary to make any extended opening statement. The Government has a number of witnesses available and will proceed with the introduction of its evidence.

The Court: Very good.

Mr. Matthews: Mr. Nixon.

LEWIS NIXON, a witness called on behalf of the Government, being duly sworn, testified as
389 follows:

Direct Examination by Mr. Matthews:

Q. You are Mr. Lewis Nixon, the Public Service Commissioner, for the First District? A. I am.

Q. Do you know Mr. Charles L. Craig? A. I do.

Q. Did you, on or about October 3rd, address to Mr. Craig a letter of which the carbon copy which I now hand you is your office copy?

Mr. Mooney: I object to the question with
390 reference to the carbon copy.

A. October 1st is the date.

Mr. Mooney: I object to that question as involving a conclusion. If you wish the original of any letter such as the one you have handed the witness, if you will let me know, why, he may be able to produce it, but we are dealing with a public officer here scarcely familiar with the routine of his office.

391

Q. Mr. Mooney has produced what appears to be a letter dated October 1, 1919, addressed to Hon. Charles L. Craig and signed Lewis Nixon. Was that letter sent by you? A. It was.

Q. Did you receive a reply to that letter? A. I did.

Q. Is this the reply that you received (handing paper to witness)? A. I think it is.

Mr. Matthews: I offer in evidence both the letter of Mr. Nixon and the reply of Charles L. Craig, which is dated October 6, 1919.

392

The Court: The clerk will mark them.

Papers marked Government's Exhibits 1 and 2.

Q. When did you receive the letters from Mr. Craig, dated October 6, 1919? A. During conference, on the forenoon of October 6th.

Q. Who was present at the time you received the letter? A. Two of my deputies, Mr. Glennon and Mr. Barrett; the Transit Construction Commissioner; Police Deputy; his attorney, my counsel and a number of the junior counsel and representatives of the various traction companies of the City.

393

Q. Was that gathering the conference which was referred to and called by your letter of October 1st, Government's Exhibit No. 1? A. It was.

Q. Was the letter from Mr. Craig read at that gathering? A. It was.

Q. Can you state whether or not the press was represented at the time that letter was read? A. Some time before that I asked the press to withdraw and all those who did not represent the com

394 panies, and I presume they did. Some time before the letter was received I had asked the press and those who were not representatives of companies to withdraw, which they did.

Q. Where was this gathering held, where was the meeting held? A. In the hearing room of the Public Service Commission, on the top floor of 49 Lafayette Street.

Q. Is that in the City and County of New York? A. It is.

Q. And in this Judicial, the Southern District?

395 A. Yes.

Q. After the letter was read was it made public, or were copies of it given out to the newspapers by you? A. No.

Mr. Mooney: I object to that as a conclusion, or, if not a conclusion—

The Court: I will allow the question. "Was it given out by you to newspaper men, or to newspapers?"

Mr. Matthews: You may examine him.

396 Cross Examination by Mr. Mooney:

Q. Have you the envelope which contained this letter, Government's Exhibit No. 2, of October 6th, from the Comptroller to you? A. I have not.

Q. Do you know whether it has been preserved? A. I do not.

Q. Do you know whether it was delivered by hand? A. It was delivered to me during the conference by my secretary, Mr. Gleason.

Q. What is the name, please? A. Mr. Edwin S. Gleason, G l e a s o n.

397

Q. And you were sitting on a dais at that time? A. I was.

Q. And did he deliver it to you in an envelope? A. He did.

Q. And did you open the envelope? A. As near as I can remember, I opened it myself, yes.

Q. And when you opened the envelope did you read the letter to yourself, before reading it aloud, or did you read it immediately aloud? A. I glanced through it and then read it aloud.

Q. This hearing room that you have mentioned was the regular hearing room of the commission, 398
was it? A. It was.

Q. A public place? A. A public place.

Q. And a place where you performed your duties —that is, those parts of them that are performed in public are in that room, are they, done and performed in that room? A. Yes. Of course. I have hearings where there are only a few in my own room, occasionally. There was a very large number this time.

Q. This conference that had been called, to which you have made reference, was called by you as a public conference was not it; are you quite 399
sure about that? A. Well, the letter speaks for itself. My idea—

Q. No; excuse me, sir. I say, are you quite sure that it was not called as a public conference? A. It is a question of what you consider a public conference.

Q. Certainly, it was not called as a private conference, was it? A. Yes, intended so, and so stated by me when the point was made that there were a number of newspaper men; I said I did not intend to hold it—

400 Q. But you did not evince that disposition until you had read through 23 pages of stenographer's minutes, did you? A. I had not the slightest objection to its being public.

Q. Let us get the starting point right. When you called this conference you intended it to be a public conference, but you were perfectly willing to have it a closed conference if somebody desired to have it closed; is not that the situation? A. No, it was intended to be confined to the representatives of companies and parties of interest. I
401 wanted to get a round-the-table conference, and I said exactly what I wanted in the letter and the letter speaks for itself, and I wrote it as carefully as I could.

Q. Will you pardon me for saying that it does not appear on the face of the letter that it is to be either public or private? We have read the letter with care. Will you come back to my question, Mr. Nixon, and state whether you were holding this conference as a public conference when you started it as Commissioner? A. It was held as an open conference when I started, and the Traction Con-
402 struction Commissioner called attention to the fact that he thought it would be better if it were closed. I was quite willing to accede to his idea. My idea was to confine it to people who were interested in this matter. It was not a general, public conference, because it required a meeting of minds to readjust the situation.

Q. Well, you certainly did not call it as a private conference, did you? A. I should say so. You seem to be holding to that meaning, but from my point of view—

403

Mr. Mooney: I move to strike that out and that these matters be refrained from.

The Court: I think the Commissioner has answered the question.

Mr. Mooney: I except to Your Honor's ruling and I ask Your Honor particularly to strike out the suggestion of the witness with reference to "holding." It is not decent procedure.

The Court: Denied.

Mr. Mooney: I except.

404

Q. Now, is not it a fact that no reference whatever was made to its being a closed conference until a number of people had been heard and until you had had proceedings which, reduced to the stenographic form, represented about 23 pages of proceedings? A. 23 pages of the proceedings at about the time at which I asked the various people to withdraw. I had done most of the talking.

Q. And was the suggestion that it should be a closed conference made immediately preceding that statement of yours which appears on the 23rd page? A. Yes.

405

Q. Had you not, prior to the suggestion that it be a closed conference, read in public, in the presence of all of these people, a memorandum made by you, in which you stated that you intended to send and publish it in the press? A. Absolutely.

Q. Well, then, that certainly was public, was not it? A. My general ideas of the solution of the question of "public" was intended to be made so, yes.

Q. In other words, are we to understand that you thought, as Commissioner, that it was a proper proceeding to have your remarks public and the

406 rest of it private? A. I gave it no thought at all from that point of view.

Q. You did say, and it so appears in the minutes, did not you, that you had intended it to be a closed conference? A. Yes.

Q. What changed your mind? A. Nothing at all people came in there and there seemed to be no particular reason at all for putting them out, that was all.

Q. Do you claim that there is anything upon the face of these communications which indicated
407 to the Mayor of the City, the Comptroller and others, that this was to be a private conference? A. I do not think so. It was a matter of indifference to me whether it was private or closed. I expected in a way to make it closed. When I saw the representatives of the papers and others that were interested enough to come, from my point of view there was no objection made. I would not have asked them to go out had not the question been brought up by another man.

Q. With whom had you conferred prior to calling the conference? A. With my deputies and
408 with the Transit Construction Commissioner.

Q. Did you receive an intimation, directly or indirectly, from the Court, in support of the conference, or the holding of the conference? A. I do not remember that I did.

Q. Well, try and recall? A. Well, I do not remember.

Q. You had talked with Mr. Stimson, had you not? A. About this conference?

Q. Yes. A. Not until I had made up my mind to have it. I do not remember any discussion with him in connection with it at all. I was talking

409

with a lot of people about that time and there was no secret in my mind.

Q. Did you receive a communication from any one stating, in substance, that this conference would be agreeable to the Court? A. I do not think I did.

Q. You have no recollection of any? A. No.

Q. Had you written another and separate letter to the Comptroller on October 3, 1919, which was the subject of this conference? A. I think I had.

Q. Is this the letter (handing paper to witness)? A. Yes, I wrote that letter.

410

Mr. Mooney: I offer that letter in evidence.

Mr. Matthews: No objection.

Letter of October 3, 1919 marked Defendant's Exhibit A.

Mr. Matthews: I do not see how it is relevant or material to the main issue here, but I have no objection to it.

Q. Well, you intended this letter, which has just been received in evidence as Exhibit A, to relate to the conference about which you testified on your direct examination, didn't you, when you wrote the letter? A. Certainly; I was in hopes that the Comptroller would come.

411

Q. Well, I will read the letter (reading: "Public Service Commission for the First District, No. 49 Lafayette Street, New York, October 3, 1919. Office of Lewis Nixon, Commissioner. Hon. Charles L. Craig, Comptroller of the City of New York, Municipal Building, New York, N. Y. My dear Mr. Comptroller: I have been wishing for an opportunity to discuss matters with you, but owing to the intemperate attitude of the Mayor in con

412 nection with any act of mine I have not asked for a conference, as any talk with me might have excited violent dissatisfaction from certain quarters, and I dislike to be a source of discord, even if in an official family. Owing to certain facts that developed at the hearing of Wednesday, I was practically forced to call the conference to which you are invited Monday. We cannot hope to get the full measure of a concession in advance. There must be negotiations. I trust you will agree with me that this is City's business of so vital a nature
413 as to compel participation. The final word is with the City Government as to the sufficiency of concessions. While I am stated to act above the law, surely in this case I am simply trying to adjust a situation that should not continue and one in which it is the duty of all charged with public trusts to aid. With kind regards, I am, yours very truly, Lewis Nixon, Commissioner."

Side Note: "Assurances of participation from the larger holding companies and several of the smaller units have been received. I expect them all." Are not the words in the left hand corner, in
414 ink, commencing with the word "Assurances" and ending with the word "all," in your own handwriting? A. They are.

Q. And did you write them on there at or about the time that you signed the letter? A. I did, at the same time.

Q. And by "assurances of participation" did you mean that you had a promise of attendance? A. Yes.

Q. Did you mean anything more? A. No.

Q. Sure of that? A. How did I know what was going to be the result of the conference?

415

Q. I asked you, sir, whether you meant anything more? A. I told you I did not.

Q. I do not think you did, but if you think you did, why, I will pass to the next question. Did you have any assurances at all? A. A number of them.

Q. What of, attendance? A. Yes, from representatives of the various people to whom this letter, general letter, was addressed. This was not addressed simply to the members of the Board of Estimate but to a number of others, and I referred—

416

The Court: You mean not to the members of the Board of Estimate alone?

The Witness: I meant it for anyone, and that was with a view to making the letter answer for everybody who had the general interest to meet with me and discuss the matter.

Q. I did not ask you any such question, sir. I did not ask you what you were thinking or what you were doing. I asked you what I think was a very simple question. Did you have any assurances of participation other than the assurances of attendance? A. No.

417

Q. Do you observe here the words, "while I am stated to act above the law," that there are quotation marks—"above the law"—aren't the words "above the law" in apparently the same colored ink as your signature? A. Yes.

Q. Did you make those quotation marks yourself? A. I did.

Q. Who were you referring to when you wrote "While I am stated to act above the law"? A. Certainly the Mayor said so several times. I do

418 not know whether other members of the Board of Estimate & Apportionment had said it or not.

Q. Well, you had the Mayor principally in mind, did you? A. Anybody that stated that I was acting above the law. There seemed to be a general desire to charge me with that.

Q. It is a fact, sir, is it not, that during this conference itself you stated that you had no lawful power in the premises, didn't you? A. I don't know; I do not think I did. I have got all the records here. It will speak for itself. I will stand
419 for it, if I said it, but I would like to know the connection in which it was said.

Q. I will remind you, sir, when we reach that point, if your memory is not good upon the point. Didn't you state in substance during this conference that you had no power whatever, and that the only man present who had any power was Transit Construction Commissioner Delaney? Did you not make that statement in substance? A. I may have.

Q. Well, then, were you not acting above the law? A. No, it was my duty to bring about this confer-
420 ence and adjust this situation, if it were possible.

Q. Who had conferred that duty upon you? A. The Certificate of Appointment, in my judgment.

Q. You mean from the State of New York? A. Yes.

Q. Then I will ask you what you meant by the statement which you made in your own words, reading as follows: (Page 26) "I have no power; the power will vest in the Rapid Transit Construction Commissioner, who sits here, as I tried to make very clear, and as he himself even made more clear, as an individual." I ask you, in view of your previous answers, what you meant by saying "I

421

have no power"; did you mean to speak truly and properly? A. Just a minute; I want to read this. I think that that particular reference meant with respect to the old contracts. Of course, I have power as respects either the service roads and other matters that come up in conference.

Q. Well, then, in a certain respect you did have no power, as you yourself admitted; is that correct? A. Well, my statement to the effect that I had no power would not destroy the power if I really possessed it, I presume.

Q. We understand that, sir. I am getting at 422
your state of mind. A. Do you want my state of mind?

Q. Excuse me, sir; I am conducting this examination. A. You said you wished my state of mind.

Q. Well, I am getting at it quite to my satisfaction. A. That is pleasant.

Q. You have never been in sympathy with the Board of Estimate & Apportionment on this question relating to the matter of conferences, have you?

Mr. Matthews: I object. 423

The Court: Objection sustained as irrelevant and immaterial.

Mr. Mooney: I submit, your Honor, that I have a right to get at the witness' disposition and attitude, and also the question of bias.

The Court: No, I have ruled.

Mr. Mooney: I except.

Q. You have referred to a statement being in your hand as a record of the conference. A. This paper (indicating).

424

Q. Is that a proper and official record? A. It is.

Q. Made in the regular course of business by the Commission? A. Made by the proper stenographers who appeared before the Committee for that purpose.

Q. And the stenographers took down all that occurred? A. I assume they must have; that is their business.

Mr. Caffey: I object to the record going in evidence. It is immaterial. At the same

425 time, if Mr. Mooney desires that record to go in evidence, there will be no objection.

Mr. Mooney: I will take the concession as far as it goes. I am always glad to be helped over my difficulties. Having the concession, I will proceed with that as a basis for further questions.

Q. This is a printed book, is not it, that you have in your hand? A. It is, yes.

Q. And was this regarded as of sufficient importance to print it?

426

Mr. Caffey: I object to the question as immaterial.

The Court: Sustained.

Mr. Mooney: I except to that.

Q. Did you direct the printing of it?

Mr. Caffey: I object—immaterial.

The Court: I will allow it on the question of authenticity only.

Mr. Mooney: My reason for asking the question goes very much further than that,

427

your Honor. I shall object to any limitation.

The Court: I will limit it to that.

Mr. Mooney: In other words, this bears directly upon publication?

The Court: Yes.

Q. When was this published, if you know, Mr. Nixon? A. It was published after the 6th of October; I cannot tell you exactly when. Just as quickly as it could be after that time.

Q. It is published under a contract, is it, that the Public Service Commission has? A. I suppose so; I do not know how it is published. The Secretary of the Commission ought to publish it. 428

Q. You do know, do you not, that the General Shorthand Reporting Co., whose name is on the face of the document, conducted by Mr. Jay McNamara, is the official reporting staff of the Commission? A. Well, I do not see anything about that on mine.

Q. Does not it say "General Reporting Co," on the bottom of yours? A. No.

Q. Well, it is the General Shorthand Reporting Co. of 150 Nassau Street, isn't it, that publishes the document? A. Well, I am not absolutely sure; I think that is the name. It is published through the order of the Secretary of the Commission, based upon the stenographic notes *that* are taken at that conference. I can go that far; I am positive on that. 429

Q. And that was under a contract between Mr. Jay McNamara and the Commission, dated on or about May 31, 1917, isn't it?

Mr. Matthews: I object, unless the witness knows.

430 A. I know there was a contract with the stenographers, yes, but whether it covered printing I do not know.

Q. Well, anyway, this document that you have in front of you is one of the documents that is gotten out in the regular course of business by the Commission, is it? A. The printing is the most important business, in my opinion.

Q. Now, do two stenographers sit there at the hearings, instead of one, so that one relieves the other as the hearing goes on? A. I think they do.

431 Mr. Matthews: I object, as immaterial.

Q. And do you remember that on this day there were two stenographers present? A. No, I do not remember.

Q. Well, do you remember that the usual thing took place? A. If that is the usual thing, yes; but you cannot expect me to remember things that I do not remember.

Q. And is that for the purpose of speeding the public report of the proceedings, for the benefit of
432 the people? A. I assume it is in the direction of accuracy.

Q. Do you know that the contract between you and the reporters, or between your office and the reporters, provides that the Commission itself is interested in the avails or moneys realized from delivering transcripts and printed pamphlets? A. I was told that; yes.

Q. So that that is a part of the business of the Commission? A. It is.

Q. And there was no departure in that respect on this day, was there? A. None whatever. We fol-

433

lowed the usual procedure, whatever that was I don't know.

Q. Have you read over the pamphlet that is in your hands? A. I have.

Q. And how recently have you read it over? A. I read it this morning.

Q. Then I offer it in evidence. A. Are you going to take this?

Q. Well, unless you object. A. No.

The Court: Give the Commissioner another copy, if you have one. 434

Pamphlet marked Defendant's Exhibit B.

Q. Let me exchange with you and give you an entirely new copy. A. Thank you, sir.

Q. Do you happen to know that the call for this pamphlet was so great that it had to be reprinted? A. I do not think I do.

Q. Now, if you will open that. You expected a big call for the proceedings at that meeting, didn't you, as a matter of great public interest? A. A number of those that came there asked to have copies of what had been said. 435

Q. That even took place while the proceedings were going on? A. It did.

Q. So that it was quite apparent to you that that meeting was one of unusual interest, wasn't it? A. Well, naturally.

Q. From every standpoint? A. From every standpoint.

Q. That of the people; that of the railway companies; that of the public officers, and that of yourself—from all of those standpoints? A. It was general public business of intense interest to every one.

436 Q. Now, Mr. Nixon, I come back again to the point—did you have no intimation before the holding of that meeting as to the attitude of the Court towards that meeting? A. I do not think so; I had been trying to get the conference.

Q. Well, let me put it to you expressly. Were you not informed by Colonel Stimson or by Mr. Hedges that that conference would be agreeable to the Court? A. I do not think so.

Q. Were you told that in substance? A. When I called up and said I was going to have the con-
437 ference and prepared the letter, I cannot remember even the substance.

Q. Your memory failed at the vital point? A. No, my memory is very good; I cannot remember every detail.

Q. So that you called up. Now, who did you call up? A. I could not tell you.

Q. Do you mean to say you have given us an independent act of memory that you called up, and then your memory suddenly fails, and you do not even remember who you called up? A. I do not know that I called up anybody in that connection.

438 Q. But you said you did? A. I will say now that I cannot remember any particular person. How can I remember what I did on the 6th of October, or the 1st of October?

Q. I should think you would remember very clearly, sir, whether this conference was being held in conformity with your ideas, or the judge of the Court, who was answerable to the receivership. I should think that would have made a great impression on you. A. This conference was called by me.

Q. Was it called in harmony with or at the suggestion of the Court? A. It was not called at the

439

suggestion of the Court. The Court, in all my conferences with him, was in accord with anything which helped to solve this problem.

Q. Then you believed, when you called this conference, that it was in harmony with the views of the Court? A. I should not want to call a conference that was against the views of the Court.

Q. Well, can you answer that question more precisely, sir. A. I cannot. I believed the Court would be glad to have me call such a conference, but I had no direct statement from him to that effect.

440

Q. Well, did you, in calling that conference, say that the traction companies must be prepared to make drastic concessions for any favors received? A. I did. That is not the first time I had said that.

Q. You said it and you meant it, didn't you? A. Absolutely.

Q. Well, now, as a matter of fact, the traction companies did not make, in your presence, or on record before you, any concessions whatever, did they? A. They offered concessions; they made none.

441

Mr. Matthews: I object to that.
The Court: Sustained.
Mr. Mooney: I except to that.

Q. Did you, during that conference, say that "It is to be assumed that they (meaning the traction companies) come here in that spirit"; did you say that? A. In the first letter, you mean?

Q. Excuse me, Mr. Nixon; will you pay some attention to my questions? A. I am paying attention to your questions, but I cannot be expected to remember every word that I said last October.

442

Q. Did you say in substance—you may, if you wish, refresh your recollection, but I am testing your recollection. Did you say, in substance, "So it is to be assumed that they come here in that spirit"? A. Yes.

Q. So all you had was the assumption, is that it?

Mr. Matthews: I do not think that is a fair question. Mr. Mooney has got the record in evidence, and he can read it, if he
443 pleases, from beginning to end. I do not think it is testing the witness' recollection.

The Court: Do you object?

Mr. Matthews: I object, yes, sir.

The Court: Sustained.

Mr. Mooney: I except.

Q. Did you write to the Comptroller, "It may be necessary to review figures and examine leases and agreements"?

Mr. Matthews: I object on the ground that
444 that is already in the letter in evidence.

The Court: Sustained.

Mr. Mooney: I do not suppose that a witness is put upon the stand to be a reproduction of a printed page. The witness must have been called for a purpose, and if he was called for a purpose of the Government, I do not know of any reason why contempt proceedings should proceed upon any other basis than an ordinary proceeding. It seems to me I have a right to examine the witness generally. I am not going to be fore-

445

stalled, I hope, by simply reading documents. If that were so there was no need of putting him on the stand.

The Court: He has identified his letter to Mr. Craig and Mr. Craig's letter to him. If this question relates to any of those letters I will sustain the objection.

Mr. Mooney: I wish to suggest to your Honor that at this hour of the examination, which has only proceeded now about three-quarters of an hour, to refer to counsel's first question on the subject as a needless 446
repetition is a rather unusual procedure.

The Court: Mr. Nixon's views are entirely immaterial to this conference.

Mr. Mooney: I am not going to rest my case on Mr. Nixon's views; I am not here to consider his views. I am here to consider what took place in connection with the writing and the receipt of this letter.

The Court: I will sustain the objection.

Mr. Mooney: I except.

Q. Did you believe that it would be necessary 447
to review figures and examine leases and agreements at that conference?

Same objection; same ruling; exception.

Q. Did you state, at that conference, that a valuation or appraisal of the properties would be necessary?

(Same objection; same ruling; exception).

448

Mr. Mooney: If your Honor please, I am at a loss to understand why I am not going to be allowed to cross examine this witness. I beg to call your special attention to the fact that the witness was examined orally as to what had taken place at the conference. Now, I submit, with great respect to the Court, that it is fundamental that if he should be allowed to give his oral statement upon the direct examination, I am entitled to examine him as to what took place at
449 that conference on my cross examination. Your Honor will bear in mind very distinctly that the Commissioner was not called merely to identify documents. He was asked what took place at that conference. I submit, without being wordy about the matter, that it is my right to cross examine him about the oral statements that have been made as to what took place at the conference.

The Court: The two letters are in evidence and the complete transcript produced
450 by the witness of what occurred at the meeting is in evidence. Now, if there is any inquiry as to something that is not reported, that, of course, will be entertained otherwise, no. The issue of the case is very simple and I propose to confine it to the issue. The objection is sustained.

Mr. Mooney: I except to that. I want to just say as I go along that I think the Court in under a misapprehension in thinking that this is a broadening of the issues. There is going to be no broadening of the issues here,

451

but we do not quite agree with the Court's idea that this is a simple issue.

The Court: I am not talking about the law in the case. I am talking about the relative facts.

Mr. Mooney: We consider all the surrounding facts are important here, but I do not want to assent to your Honor's proposition, that is all.

Q. Did you at that time have a memorandum already prepared for publication?

452

Mr. Matthews: I object.

The Court: Immaterial. You mean a memorandum of his?

Mr. Mooney: Yes.

The Court: Sustained.

Mr. Mooney: I except to that.

Q. Did you send a memorandum at the close of that meeting to the press for publication?

Mr. Matthews: I object; also immaterial.

453

The Court: Do you mean a memorandum of his own, or a memorandum?—

Mr. Mooney: A memorandum of what had taken place at the conference.

The Court: I will allow him to answer.

A. The Secretary of the Commission prepared a general resume of what took place, and sent it out.

Q. And that is in accordance with custom, is not it? A. Not necessarily. I do not always send out everything I do.

454 Q. Well, I did not say whether you always did, but that is a general custom, is it not, to hand out a statement, is it? A. I have stopped it of late. I had prepared, for your knowledge, I had prepared what I considered the fundamentals of this conference, and I read it so that there would be no mistake about it, instead of trying to explain it verbally.

Q. Surely you did not want the people to get through the press what you had said and not what other people had said, did you?

455 Mr. Matthews: I object to that, sir, as absolutely immaterial.

The Court: Sustained.

Q. Did you do this all beforehand? A. Of course, I prepared many general memoranda of what I thought should be done, beforehand. How could I have had it?

Q. And did you make arrangements for it to go to the press beforehand? A. No, I did not.

Q. Well, did you make it during the conference? A. No.

456 Q. Did you make it after the conference? A. I do not make these arrangements myself, any way.

Q. Is not it a fact that Mr. Pavey and others, as shown by the transcript here, requested that the matter be given out to the press? A. Yes.

Q. "Press" is great, big word; it is staring you right in the eye? A. Yes; right here.

Q. And it was after that that you sent out your account to the press, was not it, or directed that it de done? A. That reference to the Comptroller's letter, I think—I did not propose to make it public unless the Comptroller himself did.

457

Q. But you took two positions on that point, did not you; you took two entirely different positions on that point? At one time you said that you would not give the letter out without the consent of Mr. Craig and next you said that you would give it out, and that you would send it to the press. Now, you took those two positions? A. I did not say that I would send it to the press at all. I rather intended to send it to him than to the others.

Q. If your memory is not clear, I will read it. Are you reading the one that I like or the one I do not like? A. Both.

458

Q. Is not it a fact that you said that you would not give it out without the premission of the Comptroller; is not it? A. And I did not.

Q. Have you got any bias in this matter? A. Absolutely none whatever.

Q. Would you mind answering my questions, then? A. I said very plainly I am reading this, but, of course, I would not make the letter public unless the Comptroller himself does, and then Mr. Pavey asked me—of course, it is a personal question.

Q. Go ahead, it won't harm. The word "press" comes in there? A. Of course, this is a personal question; I would not be able to answer it.

459

Q. Just read a few words before that. A. I stated further that unless it would be a breach of official propriety, that the press be furnished a copy of the letter you have just read—I do not thing that makes sense.

Q. Oh, yes, it makes very good sense. A. Well, I do not understand it, that is all.

Q. Well, then, let me read it. A. From Mr. Pavey on.

460 Q. I have written it out here for you; let me read it. See whether this makes pretty good sense: "Mr. Pavey: May I suggest further that unless it would be a breach of official propriety—and it does not seem to me it would—that the press be furnished with a copy of the letter which you have just read. Of course, that is a personal question and I would not be able to answer it." Now, as I read it from my notes, and you, with the printed page in front of you, does it not commence to look like sense? A. You mean to say that he could not
461 answer it for me. I do not see where it is relevant. I am trying to meet your point of view.

Q. You are not meeting my point of view at all. You said what it says, did not you? A. Surely.

Q. Well, now, did not you immediately answer that: "Commissioner Nixon: Of course, I will send it (meaning the letter) with a copy of what I wrote, and the remarks of the different men." Is not that what happened? Did not you say that? A. I did.

Q. Now, that was your second statement. And then spoke up Mr. Stimson, did not he? A. No,
462 Mr. Hedges seems to follow—oh, then Mr. Stimson; yes.

Q. Up spoke Mr. Hedges and then up spoke Mr. Stimson, did not he? A. Yes, sir.

Q. And they voiced very unfriendly sentiments about the Comptroller, did not they, as appears by this record? A. I think they did; yes.

Q. And, of course, you knew where they stood, did not you?

Mr. Matthews: I object to that.

The Court: Sustained.

463

Q. Well, anyway, as soon as they had spoken up, you had a change of mind, did not you?

Mr. Matthews: Objected to as immaterial.

The Court: Sustained.

Mr. Mooney: I except.

Q. Did you mean to carry out your promise of sending it to the press when you made that statement?

464

Mr. Matthews: I object to that. There is no promise of sending it to the press.

A. I thought it would take several days to prepare this, and when it was gotten out the press or anybody else could use it.

Q. I asked you such a simple question—did you mean it when you said it? A. Oh, I mean whatever I say.

Q. Well, then, if you meant it why did not you do it? A. Why did not I send it out to the press?

Q. Yes; did you want to suppress it or hold it back? A. Well, we sent out a general memorandum of the whole meeting on the basis that I had prepared, but without the letter, because at that time the letter had not been given to the press and I said I would not give it to the press unless the Comptroller did. 465

Q. Yes; that is what you said before. But this was afterwards, it was after Mr. Stimson and Mr. Hedges had spoken, was not it? A. Not at all. Mr. Stimson asked for the letter and I said I would send it to the judge. I did not say I would send it to the public.

466 Q. The first position was that you would not give it out without the Comptroller's permission? A. I did not say that at all. I said I would not give it out to the press until the Comptroller did, and I meant it.

Q. Well, if you insist upon my doing it, I will read you from the record. Did you state as follows, on page 32: "I am reading this, but of course I shall not make the letter public unless the Comptroller himself does." Now, did you say that? A. Surely.

467 Q. Did you, after Mr. Hedges and after Mr. Stimson had spoken, did you then say, "I shall be obliged to send it to the judge," at page 35; did you say that? A. Yes, I said it or it would not be in the record.

Q. Then, after Mr. Pavey had spoken and asked it to go to the press, did you then say, upon the latter page to which we have just referred, "I will send it (that is, page 33) with a copy of what I wrote and the remarks of the different men." Now, did you say that? A. Yes, surely.

468 Mr. Matthews: Mr. Mooney, I am sure, did not intend to jump about; but he got his numbers all out of sequence.

Mr. Mooney: Well, if I did, you put them right, will you, because nobody wants to be misunderstood.

Mr. Caffey: You read from page 35 and then subsequently read from page 33.

Mr. Mooney: Naturally I did, and I said "page 33" as loud as I could talk, so the stenographer could hear, just so that I should not be picked up.

469

Q. Now, therefore, until Mr. Stimson spoke up and until Mr. Hedges spoke up, you thought that this was a proper matter for the press; isn't that so?

Mr. Caffey: Objected to as immaterial and irrelevant.

The Court: Sustained.

Mr. Mooney: I except.

Q. What was it caused you to change your mind with reference to giving out the letter on that day? 470

Mr. Matthews: I object to that.

The Court: Sustained as irrelevant.

Mr. Mooney: I except.

Q. Did you give this letter to Mr. Stimson; did you hand it to him?

Mr. Matthews: I object to that.

The Court: Overruled; he may answer it. Do you mean the letter or a copy?

Q. Well, let it stand for a moment. A. I do not know whether I gave him the letter or a carbon; but I think I gave him a copy. 471

Q. In other words, he asked for it, did not he? A. Yes.

Q. And you knew he wanted to make trouble for the Comptroller, did not you?

Mr. Matthews: That is objected to.

(Objection sustained.)

Mr. Mooney: I submit it is proper on the question of bias, your Honor, if nothing else.

The Court: Sustained.

472

Q. Did you know what he was going to do with the letter?

(Objected to; sustained; exception.)

Q. Did he use the expression that he would act as your messenger to carry it over to the judge? A. Oh, no.

(Objected to; overruled.)

473 Q. What did he say, in substance?

Mr. Matthews: Same objection.
The Court: Allowed.

A. He wanted to know if he could get a copy of the letter. He did not get a copy of the letter until I had a message that the letter had been given to the press.

Mr. Mooney: I move to strike that out. The witness stated that he had no bias, but he certainly is exhibiting it. I move to strike
474 it out, sir.
The Court: Strike it out.

Q. You used the expression in your own words, "I will send it to the judge." Now, did you send it by Mr. Stimson? A. I suppose Colonel Stimson took it.

Q. He asked for it, did not he? A. He did, yes; of course he did.

Q. And you knew when he asked for it that he wanted to make trouble for the Comptroller, didn't you?

(Objection; sustained.)

475

Q. It is very unusual for you to carry on your official communications by the hand of men like Mr. Stimson, prominent members of the Bar?

(Objection; sustained: exception.)

Q. Did you send to his Honor a copy of the original of this paper in any other way than by handing it to Mr. Stimson?

(Objection; overruled.)

476

A. I do not remember; I think my secretary sent a copy or the original—I don't know—to the judge or someone; it was sent to someone.

Q. So as to shorten it, that last answer is just guessing, isn't it, because a thing has either got to be in or out of the record? A. I do not remember that it was.

Q. That is the answer, you do not know? A. Yes.

Q. What did Mr. Stimson say to you when you gave him the letter?

(Objection; sustained; exception.) 477

Mr. Mooney: I submit that your Honor has ruled in what was done with the letter, and anything that was said in the giving of the letter is competent, but if that does not present an individual view to your Honor I will proceed.

Q. Did you know what Mr. Stimson was going to do with the letter when you gave it to him?

(Same objection; same ruling; exception.)

478 Q. Did Mr. Stimson, during that conference, say: "I think that a copy of that letter should be sent at once to Judge Mayer"?

Mr. Matthews: I object.

The Court: Sustained; it is in evidence already.

Mr. Matthews: Do not answer, Mr. Nixon.

Mr. Mooney: The witness is looking at the paper and I insist that he has testified
479 to several matters from memory on direct, and I am testing his memory now.

The Court: There is a good deal in that record that is immaterial, but it was received. Objection sustained.

Mr. Mooney: I except. I say this, your Honor, that the question of animus is important, in our view, in any contempt proceeding. While it is a question of the dignity of the Court, the question of contempt of the Court, yet if a proceeding be fomented or if it be upheld by those who have an ani-
480 mus against the defendant, it is of importance, in our view, to show that circumstance.

The Court: It is entirely irrelevant, any personal likes or dislikes.

Q. Do you remember Mr. Stimson saying. "It has been read at the meeting here and a meeting at which there is a stenographer and presumably has been taken down by him"; do you remember Mr. Stimson making reference to that?

(Same objection; same ruling.)

481

Q. Well, Mr. Stimson's name seems to be what is causing the trouble. May I ask a question without reference to Mr. Stimson? Did some one at that conference say—

Mr. Matthews: Same objection. Mr. Stimson's name means nothing, one way or the other, so fas as my objection goes.

The Court: Same ruling.

Mr. Mooney: I never heard Mr. Matthews object so promptly. He stands on his feet while I am cross examining the witness. 482

The Court: This Court endeavors to rule promptly.

Q. Now, is it a true statement in that record; do you know whether that record is a true statement or not? A. As near as I can follow it, yes. It is about what was said. I assume stenographers can make mistakes.

Q. Would you vary it at all? You have read it and read it this morning. I want to make sure before you leave the stand that somebody will not come along and correct that record out of sight for me. A. I think that is a fair statement of 483 everything that was said at that meeting.

Q. Was there an executive session that was not recorded in that pamphlet?

The Court: On that day, you mean?

Q. Yes, sir; on that day, immediately following? A. Yes.

Q. Who were asked to attend that executive session?

(Objection; sustained.)

484 A. I do not know whether we called an executive session or not.

Mr. Mooney: Now, your Honor, I make this suggestion in the best of feeling, but these objections that are fired in so promptly and that are ruled on by your Honor before you have occasion to hear me for a word or for a second, are quite too expeditious, it seems to me, for us to get at what we think from our standpoint is the root of this thing.

485 The Court: Objection sustained.

Mr. Mooney: Well, now, may there be a pause after the objection is made, so that I may have a right to be heard? It seems to me that it is proper that I should be heard on that objection.

The Court: It depends on the question and the objection. If I think it is arguable, I will wait; if I do not think so, I won't.

Mr. Mooney: I want to spread upon the record the fact that what was done on that day in connection with this matter, or, even
486 if it be thought by the witness or the Court not to be in connection with this matter, is of vital interest to my client. In other words, what I intend to show your Honor is that something was done with respect to this letter. Now, clearly that door ought not to be closed to me. I do not want to try this case in the dark. Now, something was done with regard to the letter, your Honor. Now, clearly that door ought not to be slammed in my face at that minute.

The Court: I do not know what you are

talking about. If you put the question direct then I can understand it better. 487

Mr. Mooney: You have referred to an executive session that took place immediately after the proceeding, which is noted at the end of this printed record, isn't it?

The Court: I regard that as entirely immaterial to the issue.

Mr. Mooney: First we have got that there was an executive session. Certainly a contempt proceeding is not going to stand or fall as to whether it was an executive session, or, secondly, as to when it took place. Now, I am asking whether it took place immediately after the meeting; I want to show the continuity of the thing. 488

Mr. Matthews: Mr. Mooney is cross examining a witness called for the Government. That witness testified to two or three or four particular matters on direct. He has cross examined him at large as to each of those. Now he is going beyond the examination on direct. No door has been slammed in his face. He has been cut off from nothing. No objections have been made except when the question were so obviously irrelevant and immaterial as to draw out a lengthy proceeding. If he wants to make out any of those matters when he comes to his own case, witnesses will be available and he can go into it at that time. 489

Mr. Mooney: A witness should not be allowed, as a matter of law, to divide a thing which takes place on one day into several sequences and to cut us off from inquiring into what took place on that day, and that

490 is no disrespect to the witness. The witness called it an executive session and I have no quarrel with the term.

The Witness: No, you called it an executive session. I had a meeting; it was closed. You can call it any thing you want.

Mr. Mooney: It seems to me that what took place on the day the Government has the witness to testify to, I ought to be allowed to inquire about.

The Court: The Court disagrees and will
491 sustain the objection.

Mr. Mooney: We except.

Q. Did you make a comment during the reading of Mr. Craig's, the Comptroller's, letter?

Mr. Matthews: I object to that.

The Court: I will sustain the objection.

Mr. Mooney: I submit, your Honor, that that relates to the question of what was done with the letter. Surely this is the first public appearance or quasi-public appearance, whatever my learned friend might claim it
492 was.

The Court: Where is it?

Mr. Matthews: Page 29, sir.

Mr. Mooney: I submit that I am not expected to cross examine the stenographic record. This is the first time I ever cross examined a stenographic record in my life. I never heard of the principle of law to stand up here and cross examine the stenographic record.

The Court: You put this in evidence yourself.

493

Mr. Mooney: Suppose I did, sir. I have a right to take every standpoint.

The Court: Objection sustained.

Mr. Mooney: Exception.

Q. Do not answer until his Honor rules on it. Is the statement in the stenographic record attributed to you, in the middle of the reading of the letter, is that correct?

(Same objection; same ruling; exception.)

494

Q. Did you make any comments during the reading of this letter?

Mr. Matthews: Same objection.

Mr. Mooney: Surely I am entitled to have something appear here that took place at this time. This was not any in camera, where the thing is to be hidden from either the public or the world at large. There was nothing so secret about this situation. We are here to answer for the writing or publication of a letter, and is it possible that the man into whose hands the letter first went and who read it, is not to be asked whether he made any comments during the reading of the letter?

495

The Court: His comments are immaterial. Sustained.

Mr. Mooney: Exception.

Q. Did you say during that conference that if the plans which you had outlined were followed out, that the original sources must be disclosed?

496 Mr. Caffey: Objected to as immaterial.

The Court: Sustained as immaterial.

Mr. Mooney: When I use the expression "original sources," then your Honor will make, I think, the same ruling, if I say, "the original sources of information concerning the property and affairs of the various public utility corporations holding franchises to operate in the streets of New York"—that is incorporated in the question, and your Honor makes the same ruling?

497 The Court: Certainly.

Mr. Mooney: And I take an exception.

Q. Did you talk to any newspaper men on the day after that hearing? A. Quite a number of them.

Q. And did you then give out the statement for publication? A. No.

Q. The Secretary attended to that? A. Oh, that was some time after that before the Secretary gave out the minutes.

Q. Well, he certainly gave it out for publication
498 that night, didn't he? A. Yes; this was about the middle of the day.

Q. Do you remember Mr. Hedges saying, even after the newspaper men had been excluded, that every word of what was going on would be in the afternoon papers, and that it would also be in the next morning's papers; do you remember him saying that? A. He may have said that. He said something of that nature, but I do not remember.

Q. And you wanted it in the newspapers, did not you? A. I did not care one bit whether it was in the newspapers or not. I wanted the conference and I thought I was going to produce one result with it.

499

Q. Who broke it up, Mr. Stimson or the Comptroller?

(Objected to; sustained.)

Q. Who broke it up? A. It never was broken up; it went on for months.

Q. Well, you never did these various things that you hoped for, did you? A. I got a mighty good start towards it.

Q. Did the conference break up? A. Which conference?

500

Q. This conference.

(Objection; sustained).

Q. You have stated in effect that recently you changed your habits; that you do not give out so much to the press. Was it because of this experience?

(Objection; sustained.)

Q. How recently is it since you have adopted the latter practice?

501

(Same objection; same ruling.)

Q. Did Mr. Stimson report to you after seeing the judge?

Mr. Matthews: Same objection; we have objected to that line of questioning.

The Court: Sustained.

Q. Did you talk with Mr. Stimson about this letter after you had given him this letter to hand it to the judge?

502

Mr. Matthews: Same objection on the same grounds—irrelevant, immaterial.

The Court: Same ruling.

Q. Now, will you please make sure beyond questioning by others later, if you can, whether it was the original letter or a copy that you handed to Mr. Stimson? A. I really do not remember.

Q. Well, cannot you remember whether the original left your office? A. No; I do not know anything about it. I do not file the letters, you know.

503 Q. Is not it a fact, Mr. Nixon, that you knew that this contempt proceeding was initiated against Mr. Craig before 1 o'clock on the day before any publication of this letter had been had in the public press—did you know of that?

(Objection; sustained.)

Q. Did you know anything about the time of the initiation of this proceeding?

Mr. Matthews: I object.

The Court: Overruled; he may answer.

504 A. No.

Mr. Mooney: That is all.

The Court: Anything more?

Mr. Matthews: Yes, one or two questions.

Re-direct Examination by Mr. Matthews:

Q Mr. Nixon, Mr. Mooney just asked you about the delivery of the original letter. I show you a letter from you to the United States Attorney, dated October 8th, and ask you if that refreshes your recollection as to what was done by you with

505

the original of the letter from Mr. Craig to you, referring to Government's Exhibit No. 2? A. Yes, that letter I wrote.

Q. Does that refresh your recollection as to the disposition of the original? A. Yes, I must have given a copy of the letter to—my secretary gave it to Mr. Stimson, if one was given. I think it was, and kept the original and finally sent it to you or to the United States Attorney.

Q. You testified concerning the resume of the conference which was given to the press. Did that resume contain a copy or a reference to the letter 506
from Mr. Craig? A. I do not think as prepared it did. The letter was given out to the press some time before the resume was given out by the office. What it contained I do not know without looking at the papers.

Q. You were questioned about furnishing a copy of this letter to Mr. Stimson.

Mr. Mooney: I move to strike out that latter statement, your Honor. I do not quite understand the position of the witness. He certainly has no bias. 507

The Witness: I have no bias.

Mr. Mooney: I move to strike out "the letter was given out to the press some time before" and so forth. That is hearsay.

The Court: Strike it out.

Q. Had you seen a report in the New York papers of the letter from Mr. Craig to you before the resume was given out by your office?

Mr. Mooney: I object to that, your Honor.

The Court: Fix the time.

508

A. I do not know when the resume was given out by the secretary.

Q. You did not give it out yourself, personally? A. No, the prepared statement, I do not know whether that embodied the letter or not.

Q. You do not know anything about that yourself? A. I do not remember a thing about it.

Q. I understood you to say, in answer to one of Mr. Mooney's questions, that no one got a copy of the Craig letter from you until you had word that it was in the press?

509

Mr. Mooney: I submit that there is no such thing as that in the record.

The Court: I do not so understand it.

Mr. Matthews: That was my understanding; I had a note of it.

Q. Did you make that statement, Mr. Nixon? A. I think he asked me that question.

Q. Will you state the fact with respect to that. I do not want to misstate the testimony? A. You mean when the letter was permitted to go?

510

Q. Yes. A. Why, my secretary came in. I was debating whether I should give it at all, even to Colonel Stimson, and my secretary came in and said, "You need not bother about it; one of the reporters says that they have telegraphed the letters at the City Hall." And I said, "Do as you please."

Mr. Mooney: I object to that.

The Court: Motion granted.

Mr. Matthews: Subject to being restated later?

The Court: Yes, you may ask it again if it comes up.

511

Q. I understand that you did not give out a copy of the Comptroller's letter until you received information that the press already had it?

Mr. Mooney: I object to that as involvin a series of mental operations of physical facts.

The Court: Yes, I will sustain the objection. You do not know just what time the secretary gave out that memorandum, do you?

The Witness: Oh, it was given out after 512
I left.

Mr. Matthews: I am referring to the copy of the Craig letter that was given out by you apparently to Mr. Stimson, as fixing the time at which he gave that copy to Mr. Stimson.

The Court: The question now is confined to the time that the witness gave the letter to Colonel Stimson?

Mr. Matthews: Yes, sir.

The Court: And in respect to the publication of Mr. Craig's letter in the newspaper? 513

The Witness: He said it was given out to the City Hall reporters.

Mr. Mooney: I submit that counsel is opening up a line here that your Honor ruled out on his objection.

The Court: I will take it now.

Mr. Matthews: All of it was stricken out subject to being restated later.

Mr. Mooney: Your Honor, I want to say—

The Court: I will grant that it be stricken out.

514

Mr. Mooney: The whole thing?

The Court: That is, that part about the secretary having information about the reporters.

Mr. Mooney: I ask your Honor's ruling as far as it goes. But I say that this method of re-direct examination, in view of your Honor's ruling, is an inversion of the way of conducting a case in orderly procedure, and it shows that the theory of the learned District Attorney is other, in presenting

515 his case, than such as would be evinced by his objections and your Honor's rulings upon the testimony.

The Court: As the matter now stands, the witness has testified that he delivered or caused to be delivered a copy of the letter to Mr. Stimson. That is as far as it goes.

Q. The contract to which you referred and as to which you had a general knowledge is a contract that has been in existence for some time between the Public Service Commission and the official re-

516 porters? A. I think they run for a year. They were made by the last Commission.

Q. And this work was done in the regular course of business in reporting conferences? A. Absolutely the same.

Q. Can you fix the time at which the first copy or first transcript of the testimony of the stenographer was delivered to the Public Service Commission?

Mr. Mooney: If it is within his personal knowledge.

Mr. Matthews: That is what I mean.

A. No, I cannot.

517

Q. Who would have personal knowledge of that? A. Mr. Walker, I think—Mr. Walker or Mr. Robinson.

Q. I understood you to say that you sent a copy of your letter of April 1st to Mr. Craig to a great many other persons. Are they substantially the persons mentioned on pages 4 and 5 and 6 of Defendant's Exhibit B? A. I think they are, yes. Whether that represents all of them or not I could not say.

518

Mr. Mooney: So as to complete your record, you better ask whether they were also sent to the persons stated on the first page, because the first page says that an identical letter was sent to the public officials named, so that the list inside is incomplete.

Q. I also, then, include in my question page 1, and I understand your answer will be the same? A. I directed that they be sent to all of them.

Re-cross Examination by Mr. Mooney.

519

Q. Let me see the letter that the District Attorney put in evidence.

Mr. Matthews: I did not put it in.

Q. What prompted you to send your letter to the District Attorney? A. I think a telephone message that I send it—requesting that I send it.

Q. Had you been, prior to that conference, with the District Attorney? A. No, I have never been in conference with him.

520

Mr. Mooney: Better have that marked.

Mr. Matthews: No objection; I will offer it.

Letter marked Plaintiff's Exhibit No. 3.

The Court: Is that all of Mr. Nixon?

By Mr. Matthews:

Q. Mr. Nixon, do you recall my calling on you at the office of the Public Service Commission about it? A. Yes, I recall that now.

521

Q. I think I telephoned beforehand? A. Yes.

Q. And then you addressed this letter to Mr. Caffey and delivered it to me with the enclosures therein referred to? A. Yes.

GEORGE F. DOBSON, JR., a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

522

Q. Mr. Dobson, what is your business? A. Reporter.

Q. On October 6, 1919, what was your business? A. Reporter for the New York Evening World.

Q. Do you recall going to the office of the Public Service Commission in this district on that day? A. I do.

Q. Did you attend a conference there? A. In part.

Q. What do you mean, in part? A. I attended as long as it was an open session.

523

Q. And then the reporters were excluded from the room? A. They were.

Q. When the conference was over, did you go up to the office of Comptroller Craig? A. No, sir.

Q. Did you telephone to his office? A. I did.

Q. With whom did you speak? A. His secretary.

Q. Had you known his secretary before that time? A. Yes, sir.

Q. What is his secretary's name? A. Charles Kerrigan.

524

Q. Did you recognize his voice over the telephone? A. Yes.

Mr. Mooney: I move to strike out the characterization of Mr. Kerrigan as secretary to Mr. Craig, because this is a thing for the court to take judicial notice of; Mr. Kerrigan is not Mr. Craig's secretary. He is the secretary of the Department of Finance of the City of New York, which is a statutory office.

The Court: Let it so appear on the record.

525

Mr. Mooney: —and then the answer of the witness will be deemed to be limited by that fact, because that makes a great difference.

The Court: Very good.

Q. Did you have a conversation with Mr. Kerrigan over the telephone with respect to the conference at the office of the Public Service Commission?

Mr. Mooney: I object to any talk with Mr. Kerrigan as not binding on this defend-

526 ant. He is in no sense the agent or servant of the defendant, nor authorized or empowered to do any act or make any declaration which would be binding upon the defendant.

The Court: I will take it subject to a motion to strike out.

Mr. Mooney: I except to your Honor even taking it with that qualification. That will go to the meat of this case, because it is evidence either of the highest importance,
527 or it has no value whatever, and, since it is of that kind and character, I submit it is not of the class subject to a motion to strike out. A defendant cannot be bound by a statement by another with reference to the very subject-matter at issue. Now, Mr. Kerrigan has no authority, so far as now appears, and I assume can not have any authority within his official statutory title that would be binding on the Comptroller. Whatever Mr. Kerrigan may have said is not binding on the Comptroller. I submit it is
528 not proper even to take it subject to the qualification stated by your Honor.

The Court: I will take it subject to a motion to strike out.

Q. Will you state the substance of your conversation with Mr. Kerrigan? A. I asked him on the phone if I could have a copy of the letter written by the Comptroller to the traction companies at the conference; that I wished to have it for my paper, and, in substance, he replied that if I would go down to the City Hall reporters' room I would find it there by the time I got there.

529

Q. Did you go to the City Hall reporters' room thereafter? A. I did.

Q. Did you find a copy of the letter there?

Mr. Mooney: I object to that, your Honor, as not connected, and so there shan't be any doubt as to the propriety of the time of moving to strike out, as soon as you Honor has passed upon this question, why, I wish to be heard upon the other.

The Court: I will take it subject to the motion to strike out. That motion of yours 530
may be made either at the end of Mr. Dobson's testimony or at any other time during the trial.

Mr. Mooney: I except.

The Court: You may answer.

Q. Did you find a copy of that letter at the City Hall? A. I did not.

Q. Did you go to the City Hall? A. I did, and I found that the copy which—

Mr. Mooney: One moment; I think you answered. 531

Q. What time did you get to the City Hall? A. I should say within fifteen minutes after I left the Public Service Commission.

Q. Can you fix the time you left the Public Service Commission? A. Not exactly.

Q. Give it to us as nearly as you can fix it. A. Say about 12:30.

Q. About 12:30; after you got to the City Hall and you say you found no copy of the so-called Craig letter there? A. I did not look for a copy.

532 The copy which I expected to get had been sent to my office.

Q. Did you then write up a report of the incidents of that morning?

Mr. Mooney: I move to strike out the answer of the witness; that is a series of conclusions, because he says that the copy that he expected to get—he was only asked "did you find it there" and he says "the copy that I expected to get had been sent to
533 my office." Now, surely that is both hearsay and complex. We do not know whether a copy was sent to his office.

The Court: What is the motion now?

Mr. Mooney: Motion to strike it out, your Honor.

The Court: Strike it out, whatever the words were, that he found a copy was sent to his office.

Mr. Mooney: He says, "the copy that I expected was sent to my office."

The Court: That is stricken out.

534 Q. Are you familiar with The Evening World as it was published on October 6th? A. I think so.

Q. I ask you if this is a copy of the paper which was published that day (handing newspaper to witness)? A. I think so, yes.

Q. Can you state what the general circulation of the Evening World is? A. I cannot.

Q. State as nearly as you know.

Mr. Mooney: I submit, your Honor, there is no basis for these questions; no connection made or laid.

535

The Court: Sustained.

Mr. Matthews: I offer in evidence the paper identified by the witness.

Mr. Mooney: I object to it on the ground that there is no basis or foundation laid at this time.

The Court: I will receive it for identification only.

(Newspaper marked Government's Exhibit No. 4 for Identification.)

The Court: The paper is one in general circulation?

536

The Witness: Yes.

Mr. Matthews: That is all.

Cross examination by Mr. Mooney:

Q. Mr. Dobson, were you served with a subpoena to go before the Grand Jury and testify in connection with this matter of the contempt of Mr. Craig?

Mr. Matthews: I object. It is immaterial whether he was served or not.

The Court: I will allow it. The question was whether you were served with a subpoena.

537

A. I do not know.

Q. Were you requested to go over to Colonel Caffey's office? A. In connection with the Grand Jury?

Q. In connection with the matters that you have testified to here?

The Court: Irrespective of any question of the Grand Jury?

A. Yes, I was at one time.

538

Q. And did you come over? A. I did.

Q. And did you make a statement in writing? A. Yes, in writing, I did.

Q. And did you sign it? A. I would not be sure that I made it in writing. I know I made a statement.

Q. And to whom did you make the statement, either orally or in writing? A. To Mr. Matthews.

Q. And how long ago was that? A. I do not recollect; some time ago.

Q. I would like you to try to remember about
539 the question of a statement in writing. I would like to suggest to you that counsel for the defendant is reliably informed that statements have been made in writing by some of the reporters, and, taking that as a basis for your recollection, I would like to ask you whether your recollection, as thus spurred, or refreshed, does not bring you to say that you did sign a statement?

Mr. Matthews: That is entirely immaterial.

The Court: Overruled.

540

A. My recollection is that no statement was made in writing and I am almost certain that I did not sign any such statement.

Q. When I spoke of a Grand Jury subpoena, did you receive a paper marked "John Doe—in the matter of contempt"? A. At the start of this proceeding?

Q. Yes. A. I think I did.

Q. And was it after you received that that you went to Mr. Matthews' office? A. It may have been; I cannot recollect whether it was after or before.

541

Q. Of course, you reporters are somewhat familiar with John Doe proceedings. Does not that spur your recollection, that it was a Grand Jury subpoena? A. I do not remember the type of subpoena that was served upon me. I know that there was a subpoena served upon me, but that is all.

Q. Is not this what took place—I think I can refresh your recollection again. Did not they give you a subpoena and in the corner of that subpoena read "Contempt—John Doe," and you came over here and had a talk with Mr. Matthews and made a statement to Mr. Matthews, and instead of going 542
into the Grand Jury room he said, "That is all," and you went on about your business; is not that what took place? A. I do not know whether I saw Mr. Matthews before I was served with the subpoena or not. I do know that I came over here and made a statement to him. My recollection is that I did not sign any paper.

Q. But I am on the question of this subpoena, do you see. I want to develop about the subpoena. The question is whether these witnesses, of whom you are one, have been served with subpoenas to attend before the Grand Jury in developing testi- 543
mony in this proceeding. That is what I am after. Now, do you recall—I do not expect you to recall every part of it, but as much as you remember—that you got a John Doe paper, and was not that John Doe paper a subpoena which said, in substance and effect, "you are commanded to appear before the Grand Jury of the United States, sitting in the Post Office Building?" A. I do not remember anything about the Grand Jury in the subpoena that was served on me.

Q. You are not talking about the subpoena that called on you to appear here today, are you? You

544 are talking about a paper served on you a long while ago, aren't you? A. I am almost certain that I never had a subpoena served upon me to go before the Grand Jury in this or any other case.

Q. What made you remember about this John Doe? A. I do not remember John Doe; those were your words.

Q. Did you assent to my words? A. I assented to the question that I was served with a subpoena; what type of subpoena I do not recollect.

Q. Well, when were you served with that sub-
545 poena? A. I do not know the date.

Mr. Mooney: I call on the District Attorney to produce the statement of the witness, if he made one in writing.

Mr. Caffey: You are not entitled to it.

Mr. Mooney: That is frank. I know you must be proceeding according to your rules.

Mr. Caffey: Absolutely

Q. Has anything that has occurred in the court room since you went on the stand, tended to refresh your recollection as to whether you made a state-
546 ment in writing? A. I am almost convinced that I did not make anything in writing.

Q. You are on The Globe now, are not you? A. I am.

Q. How long after October 6th did you remain with The World? A. Several months.

Q. Was your regular place of getting news at the City Hall; you were what is known as one of the City Hall reporters, weren't you? A. Not with The World, no.

Q. Did The World have a separate reporting staff

547

for the Public Service Commission? A. They had a man assigned to it during the traction trouble.

Q. And you were that man? A. I was.

Q. And so when you went there at 12:30 on that day, you went there to report a proceeding, if there was any proceeding to report, that you could; isn't that right? A. I went there earlier than 12:30.

Q. And were you in the room when the suggestion or request was made that the newspaper men be excluded? A. I was.

Q. And did you walk out? A. I did.

548

Q. Well, lots of folks remained besides the lawyers, didn't they; some newspaper men were nice enough to walk out, but lots of folks remained, didn't they? There was a great big room full of folks? A. No newspaper men.

Q. No; I know there is an honor in the profession in that respect. If the newspaper men were requested to walk out, all newspaper men could do that according to the rules of your craft, would not they? A. I think so.

Q. That made you anxious to get the news as quick as you could? A. Yes.

549

Q. In other words, the mere fact that you were being ruled out of the room on a matter which affected the people of the City of New York and payment of fare on the railways, that made you pretty keen for the news, did not it, and you would get that if you could, would not you? A. Yes.

Q. And you did your best to get it, did not you? A. I did.

Q. And to publish it as quick as you could get it? A. Yes.

Q. And in your opinion as a newspaper man in the City of New York, could any of those proceed

550 ings at that conference have been kept from the public press? A. I think so, if those who were in the conference did not divulge what happened.

Q. Well, but I am talking about the conference such as there was there that day. Would not you newspaper men have uncovered that either from the stenographer or some of those men who were present there, and really gotten it into the press? A. We would have tried to.

Q. And did you ever fail in a case like that?

551 The Court: That is immaterial.

Q. Where the public is concerned?

The Court: I will let it in.

A. Well, that is a pretty broad question. You often fail on stories, of course.

Q. On stories, of course. A. We would have tried our best to get the story, I know that.

Q. And is it not your belief that you would have gotten it? A. Sooner or later we probably would have.

552 Q. It is only a question of time, is not it? If you were assigned there, you would get it if you could get it? A. If I possibly could.

Q. And the other boys would do the same thing, would not they—excuse the expression "boys"—if they could get it? A. Yes.

Q. And if any man or set of men tried to turn you down, they would not be regarded as friends of the paper, would they? A. Oh, I would not want to answer that.

Q. Well, you do know, of course, that what was published in the paper you knew; this is your arti-

553

cle, is not it—just to identify it, for identification; is that your article (handing paper to witness)? A. Part of it, yes—the introduction and down to the quotation of the letter itself.

The Court: Better have that marked by the clerk.

Mr. Mooney: For identification.

Marked Defendant's Exhibit C for identification.

554

Q. When you called up Mr. Kerrigan, did you tell Mr. Kerrigan that you knew that the letter had been read? A. I told him I understood there had been a letter read, written by the Comptroller, and that Commissioner Nixon had declined to give out the letter to me when I requested it, and I would like to have a copy of it from him.

Q. Now, you knew, did not you, as a newspaper man there covering that work, that there was a stenographic staff there, didn't you, taking down everything that took place; you knew, didn't you, that in the course of time what took place in there would come out in the stenographer's notes, didn't you; and you knew generally, without knowing the particulars, that there was an arrangement between the Public Service Commission and the stenographer by which the stenographer was authorized and empowered to give out the transcript to everybody? A. No, I did not know that.

555

Q. Perhaps I am putting it too much in legal language. You did know that anybody who gave the fee to the stenographer was entitled to a copy of the proceedings; you knew that, didn't you? A. No, I did not know at that time that you could have a transcript by paying the fee. I did know that

556 you could get a copy of it, but I also knew that it would take several days to get that copy.

Q. In other words, they do not work as fast as the newspaper men. From whom did you understand—I am only asking you the name—from whom did you understand that this letter had been read? Who told you about that? A. It was either Commissioner Nixon or his secretary, Mr. Gleason.

Q. And do you remember the expression that was used by either one of them, that there was a "hot" letter from the Comptroller? A. I do not remember
557 that exact language, but I do know that I was told there was a letter which created quite a sensation at the conference, and I therefore asked for it and they would not give it to me.

Q. And, according to the rules of your craft, you would not stop until you got that letter, if you could get it, would you? A. I would certainly try to get it.

Q. If anybody else got it and you did not get it, it would be known as a beat, wouldn't it? A. Yes.

Q. And that is against-- A. The ethics of the profession.

558 Q. Well, now, did the man who turned this thing in, being the other part of the article in this particular case, did this man, on your own paper, claim that he had a beat on you with the letter? A. I think not.

Q. Well, you did not get credit for the whole article, did you? A. I did not seek it. I did not look for credit. I was told when I reached the office—

Q. I am not allowed to go into particulars. I only asked whether you got credit for the whole article. A. We do not get credit or discredit. We had the story in the paper. That was my object.

559

Q. Did you know Mr. Kerrigan well? A. Yes, sir.

Q. Did you know his voice well? A. Yes.

Q. And are you pretty sure that this was his voice that talked to you over the telephone, or was it simply someone who responded to his name? A. No, I asked for his name and I am certain I had him on the 'phone.

Q. Have you now stated all you know about this matter—just yes or no? A. Yes.

Q. Did you turn in any report about an order of Judge Mayer? A. I did; I wrote that. 560

Q. In appearing as a witness here to-day, this being a contempt proceeding, which is a contempt alleged to have been committed against his Honor who sits on the bench, you are not at all in fear of stating all that you know, are you? You are not embarrassed by any idea that it would be distasteful to his Honor or to anybody else, are you? You stand indifferent? A. I am here to tell the truth; that is all.

Q. But that is not accompanied by any feeling of fear, is it? A. No, none whatever.

Q. You believe that it is your duty to tell all 561 that you know regardless of the fact that this is a contempt proceeding alleged to have been committed against his Honor who is sitting now in court? A. Yes, I do.

Q. Well, then, I am going to ask you what time you learned of Judge Mayer's order on that day? A. I called on the judge as soon as I got through with my story, with writing one introduction in the office, I called on the judge in his chambers to get a comment from the judge on the letter.

Q. And what time of the day was that? A. Within a few minutes after I had read the letter.

562

Q. And you then learned of the judge's order, did you? A. I asked the judge if he had any comment to make and he said he had not, and if I wished to discuss the matter I should see the Federal District Attorney.

Q. Did you then see him? A. I did.

Q. And then did you learn of the order? A. Yes, sir.

The Court: You mean you saw the District Attorney?

563 The Witness: Yes.

Q. And then the fact of the matter is that, so far as you are concerned—and you can only speak for yourself—you learned that a contempt proceeding had been instituted against the Comptroller, before the Comptroller's letter had been published in your paper; isn't that the fact? A. No, I had seen the letter by that time.

Q. You had what? A. I had seen the letter by that time.

Q. No, I said "published in your paper."

564

Mr. Mooney: May that be stricken out, your Honor.

The Court: No, I will let it stand.

Q. You misunderstood my question. The fact of the matter is that you knew his Honor had made an order, from your conversation with the District Attorney, to have Mr. Craig prosecuted for contempt?

Mr. Matthews: I do not think that is material. The order is in the record.

565

Mr. Mooney: Well, it is all here; do not let us split hairs.

Mr. Caffey: There is no splitting of hairs.

The Court: He may be asked if he knew at this time, from the information obtained from the District Attorney, that the Court had submitted an order to the District Attorney, and let the order speak for itself.

Q. You knew that before your publication was made in your paper, did not you? A. I do not know just what time our publication came out on the street for that edition, but it was at that or about the same time. 566

Q. Well, see how I can help you along. Of course, you are a careful man. You could not put anything in your paper about the issuance of the order unless you knew about the order to put it in the paper. Now, this article that was produced here does speak about the order? A. It does.

Q. So that it is a fact, then, that you knew about the order before it had ever been published in your paper; is not that so? A. It might have been in the preceding issue. 567

Mr. Mooney: May that be stricken out, that it "might have been?"

The Court: Yes.

Q. Mr. Dobson, it stands to reason you have looked at the paper which the lawyers have shown you—it stands to reason that you knew of the order made by Judge Mayer before the article appeared in your paper. A. Before that article appeared, yes, sir.

568 Q. And before any article appeared on this subject that you know of? A. Yes.

Mr. Mooney: That is all.

Re-direct Examination by Mr. Matthews.

Q. Had you learned of the publication of the letter distributed to the City Hall reporters prior to the time you visited Judge Mayer's chambers?

569 Mr. Mooney: I object to that, your Honor. In the first place, the word "publication" would be of the essence.

The Court: Yes, I will sustain it.

Q. Had you learned of the distribution of "flimsies" or copies of the letter—

Mr. Mooney: That would be hearsay, your Honor. That would be an aggregation of circumstances.

The Court: Yes; sustained. As the matter now stands, if I understand the testi-
570 mony, Mr. Dobson had a conversation with Kerrigan. The next step in time was of Mr. Dobson learning of the copy of the letter that was in the World office. After that he called, as he says, upon the judge. The judge referred him to the District Attorney and he there got the information concerning the order which was published in the paper. Now, as the testimony now stands, he learned of the existence of the letter prior to the information that came to him as to the order, but Mr. Mooney is right in ob-

571

jecting on points that might show publication of the City Hall, or through the City Hall reporters by hearsay.

Q. You were asked whether one of the other reporters did not get a beat on you in sending this letter over to the office before you got to the City Hall. Who was the man who handled the rest of the story? A. Daniel Breen.

Mr. Matthews: That is all.

572

Mr. Mooney: I move to strike out, your Honor, that part of the testimony of the witness relating to the conversation with Mr. Kerrigan, on the ground that it is not connected.

The Court: I will deny the motion with leave to renew.

Mr. Mooney: I will except also to the denial with leave to renew.

573

CHARLES F. KERRIGAN, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Kerrigan, what was your position on the 6th of October last? A. Secretary to the department of Finance of the City of New York.

Q. Who was the head of that department at that time? A. The Comptroller, Charles L. Craig.

Q. Do you recall talking with Comptroller Craig on that day respecting a letter which was addressed

574 by him to Commissioner Nixon? A. I think I do.

Q. Will you state when your first conversation, the first remarks that passed between you and Mr. Craig, occurred, and then state the substance of them? A. It might have been at lunch; I do not recall.

Q. You do not recall when? A. I do not recall the time.

Q. Did you speak to him about that letter more than once on that date? A. I think I did.

Q. How many times did you speak to him? A.
575 Well, possibly twice.

Q. When did you first speak to him, or did he first speak to you? A. I think it was at noon time, lunch time.

Q. You recall, do you not, that there was a meeting of the Board of Estimate & Apportionment on that day? A. No, sir.

Q. I mean—you do not recall that? A. Well, there was no meeting of the Board of Estimate & Apportionment as the Board, as far as I remember. There was a meeting of, I think, the Finance Budget Committee of the Board with the Finance
576 Department officers that day.

Q. And that committee is comprised of the entire Board of Estimate & Apportionment, is it not? A. Yes, sir.

Q. Do you recall about the time that meeting began? A. No, sir.

Q. The usual practice and custom at that time was for the meetings to begin at about 10:30 in the morning, was it not? A. Yes.

Q. Do you recall any variation from that usual practice on that particular day? A. Well, I could not tell you about that because I was not there when the Committee began its session.

577

Q. Were you present at all during the session? A. I do not recall—that is, during the morning I do not recall that I was. I know I was not there when the meeting began.

Q. And in referring to that meeting, at the time it usually began, can you now state definitely the time of the first conversation between you and Mr. Craig respecting his letter to Mr. Nixon? A. I could not tell you exactly, no, sir.

Q. It was before the beginning of the meeting of the Budget Committee, was it not? A. Yes, sir.

578

Q. You are positive about that, are you? A. Well, I was not there when they began the meeting.

Q. Well, did you see the Comptroller before he went to that session? A. No, sir.

Q. Are you positive about that? A. No.

Q. During the morning did you go to the meeting? A. I might have.

Q. Did you speak to the Comptroller? A. I am certain.

Q. Well, now, can you fix the approximate time of your first discussion with the Comptroller of this letter to Mr. Nixon? A. I think it was after they had finished their session.

579

Q. Do you know what time they had finished their session? A. I think about half past one or a quarter after one; something like that.

Q. I show you Government's Exhibit No. 2, and ask you if you ever saw that before (handing paper to witness)? A. I think so.

Q. Where did you see it? A. Why, in my office.

Q. Who was present and on what day was it

580 when you saw it? A. On this day that the letter was sent, on October 6th.

Q. Prior to its being sent to Mr. Nixon? A. If I saw it at all I saw it then; yes, sir.

Q. Your impression is, and your belief is, that you did see it prior to its being sent, is it not? A. That is my impression.

Q. Are you familiar with the Comptroller's handwriting, and can you say whether or not that is his signature? A. I think so, I am familiar with his signature.

581 Q. You have seen him write and know his handwriting? A. Yes, sir.

Q. And it is your belief that this is his signature? A. Yes, sir.

Q. That is your opinion. Now, when you first saw that letter can you state how it came to your notice? A. Yes, sir.

Q. I wish you would state that. A. I think the stenographer showed it to me.

The Court: You mean the stenographer in your department?

582 The Witness: The stenographer in our department; yes, sir.

Q. What is the name of that stenographer? A. Mr. Van Valkenburgh.

Q. Was anyone else present? A. Well, I could not answer that.

Q. What is that? A. I say I could not answer that; I do not remember.

Q. Was the Comptroller present? A. No, sir.

Q. Then what did Mr. Van Valkenburgh do with the letter? A. Why, I believe it was—he took it

after I had looked it over, and gave it to the messenger, or someone of that kind in the office. 583

Q. Did he give it to the messenger or did you give it to the messenger? A. Well, I could not answer that.

The Court: Was it signed at the time?
The Witness: I think so.

Q. Had you up to that time spoken to the Comptroller about it? A. No, sir.

Q. Had the Comptroller spoken to you about it? A. No, sir. 584

Q. Do you know the name of the messenger to whom it was delivered? A. No, sir.

Q. Did you hear the instructions given to the messenger? A. Why, as I recall the circumstance, either—I think Mr. Van Valkenburgh gave it to the messenger in my presence and told him to deliver it to Mr. Nixon—

Q. Did you read the letter through? A. Yes, sir.

Q. Did you have any copies of the letter made at that time? A. Yes, sir.

Q. How many? A. One. 585

Q. What did you do with the copy? A. I left that on my desk.

Q. Did you have additional copies made?

Mr. Mooney: One moment. I object to this, your Honor, upon the ground that from this point on the witness is not in a position to bind the defendant in this proceeding by any word or act of his. The witness is a statutory officer. He is an employee or an official of the City of New York,

586 paid by the County of New York, and is not in the employ of the Comptroller, nor the servant or agent of the Comptroller; and the evidence up to this point has distinctly shown that he had not spoken to the Comptroller with reference to the letter. Now, we have reached a point of importance where it is proper to interpose the objection which I have to make, and that is that it is incompetent to bind the Comptroller.

The Court: I will overrule the objection.

587 Mr. Mooney: I will except.

Q. (Question repeated) "Did you have additional copies made?" A. Yes, sir.

Q. How many?

Mr. Mooney: Same objection, and may it be taken to include this line of questioning?

The Court: It will be noted that this line is objected to, and Mr. Mooney may have an exception to each and every ruling of the Court.

588 A. I think about 20; possibly 20.

Q. On thin sheets, referred to as "flimsies"? A. Yes.

Q. At about what time were those copies made? A. At about, I think, about half past 12.

The Court: Was that before or after you lunched with Mr. Craig?

The Witness: That was before.

Q. Up to that time had you received any instructions from Mr. Craig respecting this letter? A. No, sir.

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Q. And according to your recollection you cannot fix the time at which you first spoke of the letter to Mr. Craig, or he spoke of it to you? A. Not very closely.

Q. Give us your best approximation of the time when you first talked with Mr. Craig about the letter? A. Well, it was—I know it was after I read it.

Q. And you read it at about what time? A. I think I might have read it—my recollection is this. The hearing was set for whatever time it was; the hearing was on before I read the letter, and I read 590 the letter, I believe, just before it was sent out and delivered to Commissioner Nixon.

Q. And it was after that that you spoke to Comptroller Craig about it for the first time? A. Yes, sir.

Q. You are positive that you had not spoken to him about it before, nor had he spoken about it to you before this time? A. Yes, sir.

Q. Well, now, will you state the substance of what Mr. Craig said to you and what you said to him when he spoke to you the first time about the letter?

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Mr. Mooney: I think I ought not, perhaps, to rely upon my general objection. I wish to state specifically that this evidence is incompetent.

The Court: Overruled.

Mr. Mooney: I except.

Q. (Question repeated) "Well, now, will you state the substance of what Mr. Craig said to you and what you said to him when he spoke to you the first time about the letter?"

592 The Court: You are now referring to the first time that Mr. Kerrigan spoke to Mr. Craig?

Mr. Matthews: Yes, sir.

Q. (Question repeated) "Well, now, will you state the substance of what Mr. Craig said to you and what you said to him when he spoke to you the first time about the letter?" A. Well, I think I told him I read that letter to Commissioner Nixon.

593 Q. What did he say to you? A. I think he asked me what I thought of it, and—

Q. And what did you say? Go right ahead; tell us all that happened. A (continued)—and then—I cannot remember just what I did say, except that I may have said—It seems to me that I said something to the effect that it was a pretty strong letter.

Q. What else was said? A. I do not think very much else was said.

Q. Is that all you can recall that was said on that occasion? A. Well, that is all that I recall now that I did say, on that conversation.

594 Q. And have you repeated everything that Mr. Craig said? A. Why, I think I have.

Q. Nothing more occurred on that occasion, that first occasion? A. I do not believe so.

Q. You told him that you had read the letter and he then asked you what you thought of it and then you told him you thought it was a pretty strong letter. Then nothing else was said? A. I think not.

Q. Where were you when this occurred? A. The conversation?

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Q. Yes; can you fix the place of it? A. It might have been during the morning in the session of the Committee, or it might have been when we went down to lunch.

Q. Now, as a matter of fact, do not you recall that when you went in to the session Mr. Craig was there and had a copy of the letter in his hand?

Mr. Mooney: Are you not misquoting the witness when you say "when you went to the session"?

Mr. Matthews: Yes, he said that.

596

A. No, I do not remember any such thing.

Q. You do not recall that? A. No.

Q. Is it customary for you to attend—was it at that time—to attend the sessions of the Budget Committee? A. Well, I would not attend the full session of the Committee, regularly, but I had—I would go in and out occasionally, just to see more or less what was going on in the Committee and to keep track of what was coming along.

Q. And isn't it a fact, Mr. Kerrigan, that very shortly after you read this letter that Mr. Van Valkenburgh had shown to you, you went in to the 597
session and saw Mr. Craig there and then spoke to him about the letter and he spoke to you about the letter? A. Well, that is possible; that is possible.

Q. After mentioning these things, doesn't it refresh your recollection, and is not that your present belief and present recollection, that that is the sequence of those events on that day? A. I think that is very likely, but I am not positive.

Q. Of course, we can never be absolutely positive about much of anything. A. I mean, I think it is

598 very likely, but I am not positive as to just when it occurred, but I do remember the conversation in that way.

Q. Did any one else participate in the conversation, or stand around and hear it? A. I think not.

Q. You do not recall any other person being present? A. No.

Q. Or any remarks made by any one else present at the time? A. No, sir.

Q. To whom did you give instructions to have the "flimsies" made up? A. Why, I think I gave
599 them to Mr. Van Valkenburgh.

Q. Now, was Mr. Van Valkenburgh in the session that morning? A. Well, I did not see him.

Q. Is he the stenographer that usually reports the proceedings of the Budget Committee? A. No, sir.

Q. At what time in this sequence did you give him those instructions, after you had talked to Mr. Craig on this first occasion, or prior to your talking to Mr. Craig? A. Why, I could not place that—I mean I could not tell you.

Q. You could not tell whether it was before or
600 after? A. No.

Q. What did you do with those copies, flimsies? A. The flimsies—

Mr. Mooney: I think this is a proper time to repeat my objection, so that it does not mean that I am assenting to the course of the examination that the acts of the witness are in no sense binding on the defendant.

The Court: Overruled.

Mr. Mooney: He is neither the servant nor the agent of the defendant.

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A. I gave them to one of the men in the office and told him to deliver them to Mr. Breen in the City Hall—in the City Hall reporters' room.

Q. Mr. Breen? A. Yes, sir.

Q. In the City Hall reporters' room? A. Yes, sir.

By the Court:

Q. Now, what time was that, Mr. Kerrigan? A. That must have been—I think it was about between half past 12 and 1 o'clock in the day.

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Q. Was that before or after you saw Mr. Craig? A. Well, I did see Mr. Craig in the meeting.

Q. I mean before you spoke to Mr. Craig? A. It might have been.

Q. Did you and Mr. Craig leave the Department of Finance together and go out to lunch? A. I think we did.

Q. Now, was this before you went to lunch? A. When I gave this out, yes, sir.

Q. And was it before the meeting of the Finance Committee, or the Budget Committee, was over? A. They were in session when I gave these out.

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Q. Do you remember now whether you caused these so-called flimsies to be delivered before you had the talk you testified about with Mr. Craig, or after, when you had that brief talk? A. It made no impression on my mind; I could not tell you now.

Q. You are not clear? A. No.

By Mr. Matthews:

Q. What is the reporters' room? A. That is room 9, City Hall.

604 Q. Where the City Hall reporters meet and get their information and from which they send their reports in to the newspapers? A. Yes, sir.

Q. Do you recall Mr. Dobson calling you up on that morning? A. Yes, sir.

Q. Do you recall the substance of his conversation with you? A. I do, I think, substantially.

Q. Did you tell him that you would shortly send over, or that there would be at the City Hall, a copy of this letter when he got there? A. I could not say "when he got there," but I certainly re-
605 ferred to the City Hall reporters' room.

Q. As a place where he could get a copy of this letter? A. Yes.

The Court: Had the letter gone over there then when Mr. Dobson called you up?

The Witness: I think not; I think that I told him that I would send it to the City Hall reporters' room.

The Court: You knew Mr. Dobson, of course?

The Witness: Oh, yes.

606 The Court: And knew him to be a reporter on The Evening World?

The Witness: Yes.

Q. Well, you know most of the reporters around City Hall, do you not? A. Some; quite a number of them.

Q. When was the next conversation with Mr. Craig about this matter on that particular day?

Mr. Mooney: I raise the same objection as heretofore. This witness was not acting as the agent or servant of Mr. Craig, but he

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was acting as an independent—as an employee of the Finance Department of the City of New York.

The Court: Overruled.

Mr. Mooney: I except to that.

A. Why, I think it was during the lunch period; it was about half past one to half past two; two o'clock to half past two—something like that.

Q. Where did you see him; did you see him in the office or in the Committee room? A. Why, I think I just went down the street.

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Q. Did you have lunch together? A. Had lunch together.

Q. Where did this conversation take place, at lunch or while you were walking down the street? A. I think I did mention it walking down the street and then about sending it over to Mr. Breen, I think I mentioned that to him; and then either during lunch or after lunch it seems to me it was in some of the evening papers.

Q. You saw it in some of the evening papers while you were out to lunch? A. Yes.

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The Court: That is, the evening papers that come out in the afternoon?

The Witness: Yes.

Q. What time did you return from lunch? A. Oh, along a little after 2 o'clock, probably.

Q. And did you return with Mr. Craig? A. I think I did; yes, sir.

Q. To your office, or did you go to the committee room? A. I went to my office.

Q. Did he go with you ? A. I think he went into the committee room.

610 Q. And you went on into your office. Now, will you state the substance of what you said to Mr. Craig and what he said to you on the second occasion when you discussed this letter?

The Court: That is subject to the same objection.

Mr. Mooney: Yes; I do not quite understand what counsel means by the "second" case.

Mr. Matthews: He testified he talked to
611 him twice about it and he has already given us the substance of the first conversation.

The Court: As I understand it, you are now referring to the conversation that began, as I understood Mr. Kerrigan's testimony, when Mr. Craig and Mr. Kerrigan left the office and started to go to lunch, and whatever took place at lunch?

Mr. Caffey: Yes.

A. As far as I can recall, I related that I had—Mr. Breen had asked me to send the copy or copies
612 of the letter to him personally and that George Dobson had called up to get a copy, and that I had sent the copies over to the City Hall to Breen in order to comply with his request, or something like that. I related the incident of the two men on the same newspaper, calling up for the same thing. That is about all there was to it.

Q. What did Mr. Craig say? A. Well, my recollection is not clear on that, as to what he said, except that there was some question, as far as I remember, about the relations, the positions occupied by Breen and Dobson.

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Q. You mean as to who they were? A. Well, that is, as to who covered City Hall regularly, and did they have anybody covering the Public Service Commission, or was this special or something.

Q. Well, now, you say that both Mr. Breen and Mr. Dobson were reported by you to Mr. Craig as having asked you, both men having asked you for this letter, and you remarked that they were two men from the same paper? A. Yes, sir.

Q. Do you recall when Mr. Breen talked to you about it; did he talk to you personally or over the telephone? A. The first time Mr. Breen talked to me about it, I think, was in the office. 614

The Court: In your office?

The Witness: In my office, when I arrived there late that morning, and he was in my office or out in the corridor, I think, when I came in, or it was soon after I came in, and I had this copy of this letter to Commissioner Nixon on my desk; and I pushed it over to him like that (indicating) and said, "There is some thing; read that"; and I think he wanted it then, but I said I did not want to give it out until I was sure Nixon had it. 615

Q. That was before you first spoke to Mr Craig? A. Yes, that was right after, as far as I recollect; it was right after I arrived.

Q. What time did you get in? A. About 11 o'clock, I think.

Q. And you found that letter on your desk? A. No, I think it was handed to me by the stenographer.

616 Q. And you read it and then shoved it across to Mr. Breen to take a look? A. Not this copy.

The Court: Not this original?

The Witness: Not this original, but a copy.

Q. You had not seen the original at the time when he first came in to the office? A. Oh, yes, it was after I had read the leter.

617 The Court: The original?

The Witness: The original, I believe, of which I showed a copy to Mr. Breen.

Q. I thought you said as you went in you saw Mr. Breen there? A. Well, I say I think he was in the office—either in the corridor or in my room —when I came in, but then I read the letter which the stenographer handed to me. That was almost the first thing I did.

Q. And then you dispatched the original to Mr. Nixon? A. Yes, sir.

Q. Was Mr. Breen present when you did that?
618 A. I do not think he was in the room then.

Q. And then did you have Mr. Breen come in and show him the carbon that you kept? A. Yes, sir.

Q. Mr. Breen did not know anything about the letter, so far as you know, up to that time, did he? A. No, sir.

Q. And you told him that you did not feel free to give him a copy until you were sure it was in the hands of Mr. Nixon? A. Yes, sir.

Q. And you had dispatched it by messenger. It is about a 10 to 15 minute walk from the City Hall to the Public Service Commission—rather, from

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the Municipal Building? A. Well, it may take 10 or 15 minutes.

Q. Well, then, after 10 or 15 minutes had expired, you were ready to give the letter out to the newspapers? A. Yes, sir—that is, I felt ready.

The Court: Mr. Breen was there then?

The Witness: Yes; he wanted some other information, I do not know what it was, and that happened to be there and I showed it to him; that was the first original carbon of this letter.

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The Court: Did you tell Mr. Breen anything about sending copies over to the City Hall reporters?

The Witness: Not at that time.

The Court: But you said you would let him have it as soon as you were satisfied that the original had been delivered to Mr. Nixon?

The Witness: I think I did.

Q. And then you went in shortly after and saw Mr. Craig about it? A. No, I do not think so.

Q. In the meeting of the Budget Committee? A. I might have. 621

Q. And you told him, did not you, that the newspapers would want copies, and you would want instructions as to whether or not to send them over? A. No, sir.

Q. You did not mention that at all to him? A. No, sir.

Q. You are positive of it? Or you just do not recall? A. No, I don't recall any such thing.

Q. You got in about 11; you dispatched this letter; had your talk with Mr. Breen; dispatched the

622 original letter to Mr. Nixon; had your talk with Mr. Breen and then some time during that period had a talk with Mr. Craig about it, probably in the committee room?

Mr. Mooney: That is very involved to me.

Q. And then you had a telephone talk with Mr. Dobson?

Mr. Mooney: I object to that as complex.
623 The Court: Yes; sustained.

Q. Did you talk to any other newspaper men about the letter before you sent it over to City Hall? A. Not that I recall.

Q. I wish you would pay attention to this question and see if I have the events and the order of events correct. You got to your office about 11 o'clock; is that right? A. It might have been after 11; I am not sure.

Q. Then Mr. VanValkenburgh, if you recall, showed you the original, signed copy of Mr. Craig's letter to Mr. Nixon? A. I think that is right.

624 Q. And it was then dispatched by messenger to Mr. Nixon; is that right? A. Yes, sir.

Q. And you were also given by Mr. VanValkenburgh a carbon of the letter? A. Yes, sir.

Q. Mr. Breen came in and you had a conversation with him about it and showed him the carbon? A. Yes, sir.

Q. Then you went over to the Board of Estimate, or Budget Committee room, and talked with Mr. Craig; is that right? A. Well, I did, some time, yes; either before or after.

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Q. Then you gave orders to Mr. VanValkenburgh to make up a set of about 20 flimsies; is that right? A. I am pretty sure I gave that order to him after I read the letter.

Q. You are positive you gave that order at the time you first read that letter? A. No. I know I spoke to him more than once about it.

Q. Then later Mr. VanValkenburgh delivered these flimsies to you? A. Yes, I don't know whether he did or not, but somebody did.

Q. And you received a telephone call from Mr. Dobson about the letter? A. Yes.

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Q. And then you dispatched these by messenger to the City Hall reporters' room? A. Yes, sir.

Q. Then you went to lunch with Mr. Craig and reported to him that Mr. Dobson and Mr. Breen had asked you about this letter? A. I think I related that, or something to that effect.

Q. The substance of your conversation with Mr. Craig at lunch, as I understand it, was that you had talked with these two reporters and had sent flimsies over to the reporters' room? A. To Breen.

Q. To Breen, in the reporters' room? A. Yes, sir.

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Q. Twenty copies? A. Well, I did not mention the number of copies. I doubt if I knew how many copies there were. It is just something that I have all the time.

By the Court:

Q. Your last answer suggests something. Let me have—Mr. Mooney may object to my questions as well as to anybody else's. You say it was something you had all the time. What do you mean by that? A. Why, quite often I get out copies of re-

628 ports, or a memorandum—some statement for the newspaper men—and I tell the stenographer, "Get this out for the City Hall reporters," or something of that kind, and that is about all I have to do.

Q. Well, then, you are now referring to the procedure in the case of matters which refer to public business in the conduct of the office, either reports, letters or other papers that would seem to be of public interest? A. Yes, sir.

Q. As I understand it, you were a reporter yourself? A. Yes, sir.

629 Q. And for how many years? A. Oh, six or eight, maybe ten.

Q. And then you are familiar with the routine and methods of reporting for the daily newspapers? A. Yes, sir.

Q. You were on a large daily yourself, weren't you? A. Yes, sir.

Q. Now, as I gather from your statements, the customary method, or one of the methods of making public any matter deemed to be of interest, is to prepare a number of copies known in the newspaper language as "flimsies," and to cause those to

630 be delivered to whatever set of newspaper reporters are covering that class of news? A. Well, sometimes; sometimes we give it to them when they come in.

Q. Well, either way; but it is done through a number of copies? A. Well, we often do that.

Q. Now, in the office of the Comptroller I assume there are many matters dealing with the public interest? A. Yes, sir.

Q. And which are deemed of sufficient interest to be made public? A. Yes, sir.

Q. And to be published in the newspapers? A. If they see fit.

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Q. I mean so far as you are concerned, to be published in the newspapers if the newspapers will publish them? A. Very often they do not.

Q. But that is not my question; I am not asking you now about the ultimate result. My question now is that your method of acquainting—your method in the Comptroller's office, prior to this time, of acquainting the newspaper men, of giving the news to the newspaper men, was to see that they got copies, either at your office or at the City Hall reporters' room?

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Mr. Mooney: Now, it would be proper for me to make an objection which is a substantial one. That is, that in a proceeding in the nature of a contempt a conviction will not lie upon anything which depends upon custom or a practice, but that the authorities clearly hold that it must be an individual act in fact, or contemptuous utterance, as to the particular matters in inquiry, and that no contempt can, by reason of its very nature, depend upon that which would follow a custom or a course; that the very essence of the contempt is the direct, specific act on the part of the defendant to make a contemptuous reference, and it cannot be made out nor supported by either custom or usage or even knowledge or usage. Therefore I submit that this line is not proper to be pursued further.

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The Court: Overruled.

Mr. Mooney: I except.

The Court: Will you repeat that question?

634 Q. (Question repeated) "But that is not my question; I am asking you now about the ultimate result. My question now is that your method of acquainting—your method in the Comptroller's office, prior to this time, of acquainting the newspaper men, of giving the news to the newsaper men, was to see that they got copies, either at your office or at the City Hall reporters' room? A. Yes, your Honor.

635 Mr. Mooney: If I am not breaking the thought of your Honor—I move to strike out that evidence and I make it upon this ground, and I ask your indulgence only for a moment because I do not want to be lengthy about it, but I want to say now that you, being the trier of the facts in this case, as well as the authority to apply the law, have made a ruling which goes to the root of this proceeding, and I wish it to be known that this is the attitude which the Comptroller takes at the present time. It will not be possible for you to disabuse your mind, if it
636 were abused, to let in this evidence; it will not be possible to disabuse your mind of incompetent evidence of this character, and therefore I say at this time that we have reached a point in which the actual, definite competency of this testimony will be substantially decisive in the case. If it should turn out—and I do not want to make much words about it—if it should turn out that your Honor is wrong on the ruling of evidence, this is not an error which can be cured by your saying, hereafter, of record or otherwise, that you would disregard it, be-

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cause it is not possible for the trier of the facts in a case of this kind to disregard the testimony which is of this character and of the grave consequences that flow from it. I have made these remarks only because I felt that this was an appropriate and proper way to indicate the theory upon which the counsel for the defendant is proceeding, and I thank your Honor for having listened to me.

By the Court:

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Q. Mr. Mooney has referred to your office. Are you appointed by the Comptroller? A. Yes.

Q. That is to say, not from the Civil Service? A. Oh, no; no, sir. Exempt position.

Q. It is an exempt position, and the Comptroller has the power of appointment in his good judgment? A. Yes, sir.

Q. And you were thus appointed? A. Yes, sir.

Q. Now, prior to the 6th day of October, with the knowledge of the Comptroller, did you or did you not have charge of making public for the newspapers, letters, or, as you spoke of it before, reports and memoranda, or other subject-matter?

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Mr. Mooney: I object to that on the ground that it is incompetent and improper, and I assume, your Honor, that in view of what has taken place it will be unnecessary for me to state my grounds further than that. Am I right?

The Court: You are quite right; I overrule it.

Mr. Mooney: I except to that.

640 A. Yes, I had, you might say, charge of it, but I usually furnished to the newspaper men whatever information I could that they wanted.

Q. What I was trying to find out was a matter of fact, whether the furnishing of copies to the newspaper men which the newspaper language calls "flimsies," of matters of information for newspapers, was in your charge to the knowledge of the Comptroller?

Mr. Mooney: Same objection, and, particularly, that it involves a complexity of the
641 duties and the courses and the usages.

The Court: Same ruling:

A. Why, I think generally that is correct.

Q. Just state it in your own way. What do you mean by "Generally that is correct"? A. Why, occasionally the Comptroller at a meeting might give out a copy of the report.

Q. You mean himself? A. Himself, like a meeting of the Board of Estimate, or something of that kind, without its going to me, but ordinarily he
642 leaves all those things to me.

Q. And when you say he left them to you, was that the result of some conversations with the Comptroller earlier in the performance of your duties as secretary? A. Why, I think it just went along that way without any particular—it was just the understanding without any particular conversation or directions.

Q. That is, the understanding between you and the Comptroller? A. Yes, sir.

Q. And so far as you know, was any one else, outside of the Comptroller's office—of course, other than yourself—authorized to give to any news-

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papers the copies of documents which emanated from the Comptroller? A. Why, I think there may have been others.

Q. Do you know of any others? A. Well, things were given out at times that I did not give them out, at times when I was not there.

Q. You mean when you were away? A. Yes.

Q. Let me limit my question to such times as when you were present. I am not talking, of course, of times that you may have been away on vacation, or away for some other reason. I mean when you were present; in other words, to put 644 the matter simply, I am asking you what the routine was at such times when you were present and the Comptroller was present. A. Well, Mr. McGinness, for instance, the Chief Accountant, might, and has given out statement; Mr. McIntyre, the head of the Bureau of Municipal Investigation of Statistics, may issue copies of reports.

Q. Was any one else but yourself in charge of giving out for publicity papers signed by the Comptroller? A. Oh, yes; the Chief Clerk—well, no, he would not be in charge of that; he frequently distributes.

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Q. The question is, was he in charge?

Mr. Mooney: I submit, of course, that your Honor's words "in charge" involve, in itself, a conclusion.

The Court: I will sustain that objection and I will ask the question.

Q. What do you mean by "in charge"?

Mr. Mooney: That is your Honor's term, not his.

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The Court: He just stated that.

Mr. Mooney: Well, he was repeating your Honor.

Q. Well, this was done in accordance with a custom that concerned your own duties which had been engaged in with the knowledge of the Comptroller?

Mr. Mooney: Would it be appropriate for me to renew here and impress upon your
647 Honor my objection that it would be more than merely form, and your Honor understands that?

The Court: I understand it.

Mr. Mooney: I except to the ruling. I do not believe contempt can be proven by custom.

The Court: I understand. Read the question.

Q. (Question repeated) Well, this was done in accordance with a custom that concerned your own
648 duties which had been engaged in with the knowledge of the Comptroller? A. I should say so.

By Mr. Matthews:

Q. Mr. Kerrigan, how long have you been secretary to the Department of Finance? A. Since January 1, 1918.

Q. That is, since Mr. Craig was elected Comptroller? A. Yes.

The Court: You mean took office?

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Q. Yes, took office. You were appointed by Mr. Craig? A. Yes.

Q. What are your general duties? I wish you would briefly describe your general duties as Secretary of the Board of Finance. A. Well, I hope this won't be used in fixing the salary, but, in general, I have charge of all of the internal administration of the department; the ordering of supplies; the appointment of employees—although I do not appoint them, but I recommend them; making up of the budget for the department; the rates of pay received by the employees; the discipline of em- 650
ployees; the matter of communications for the department.

Q. What kind of communications? A. Requests for information and the form of the communications with the Civil Service Commission and with most of the other departments in the City.

Q. Who is your immediate superior? A. My superior is the Comptroller.

Q. And all of your duties are performed under his general supervision and direction? A. Yes; under his general supervision.

Mr. Matthews: That is all. 651

Cross Examination by Mr. Mooney:

Q. Mr. Kerrigan, you are appointed by and pursuant to statute of the State of New York, are you? A. Well, I do not know about that; I never looked that up.

Q. Well, is your appointment in writing? A. Yes, sir.

Q. And signed by the Comptroller? A. Yes, sir.

Q. Is the letterhead that was in use and is now

652 in use, and has been, to your knowledge, ever since you have been with the Department, where the "City of New York" appears at the top (handing paper to witness)? A. Yes.

Mr. Mooney: I offer it.
Mr. Matthews: I object to it right now.
The Court: I will take it.
Marked Defendant's Exhibit D.

Q. By whom is your compensation fixed? A. By
653 the Board of Estimate, by the Board of Aldermen and the budget.

Q. And by whom is your salary paid? A. By the City of New York.

Q. Are you now, or have you been at any time since your appointment as Secretary to the Department of Finance, in the employ of Charles L. Craig? A. No, sir.

Q. You have referred, in answer to some questions in which the word has been suggested to you, rather than used by you personally—that there was a custom in the office with which you are connected. Did you mean in answer to those ques-
654 tions anything more than that there was a course of business? A. You mean the procedure followed, we will say, or the routine followed in getting out, doing business, for instance—that is what I mean.

Q. And his Honor has referred to your familiarity with matters of this kind by the fact that you have been a reporter, so I will take advantage of that strain and follow it up a little bit. Is the system, or course, or custom, as it may have been termed in the direct examination, and the course of business as I presume it in my question, any different with respect to matters going to the public from

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the Comptroller's office than that going to the public from any other of the great departments of the City of New York?

Mr. Matthews: If he knows.

A. Why, not materially different.

Q. And it is a fact, is it, that all the records and papers and books of the public departments in the City of New York are public property to which the public have access? A. So I understand.

Q. And when you say you understand that, you have acted upon that and you have taken that as the law of your position, have you not? A. I have. 656

Q. And that any one coming into your office is entitled to look at your letter book and entitled to look at your copies if they took the position that they are entitled to them? A. I think so; yes, sir.

Q. That is, of course, under reasonable regulations and with reasonable propriety? A. Yes.

Q. I am not talking of a person who comes in very abruptly or unmannerly. You have now given us your understanding of the publicity of the office, have you? A. Yes, sir.

Q. Now, is it not a fact within your experience on both sides of this matter, to which reference has been made, that any communication from one public officer in the City of New York to another public officer in or around the State of New York, with reference to a public matter, is bound to become public within a very short space of time? 657

Mr. Matthews: I object to that on the ground that it is incompetent.

The Court: I will allow it; he may answer it.

658 A. Oh, yes, it becomes public.

Q. In other words, a communication from one office to another on a public matter, such as a traction matter, whether it be given out by the writer or the receiver, or dug out by the reporters, in your experience, that is bound to become public, is it? A. If there is some interest in it, yes.

Q. Well, there certainly was enough interest in this subject, wasn't there? A. Yes, sir, I think so.

Q. There was a compelling interest, wasn't
659 there, at the time? A. There was a very wide interest.

Q. Now, has there not been one step that you have not been questioned about at all, and is not that a telephone call that you had from Mr. Breen? You had seen Mr. Breen. Am I right in assuming that there was a telephone call from Mr. Breen? A. Yes, sir.

Q. Now, will you please tell us about that? A. Why, Mr. Breen called me up and asked me when I gave out this copy of this letter to be sure and send it to him, and I said I would, and he asked
660 to make sure that it was delivered to him personally, and I said I would.

Q. Was there any reference made to Mr. Dobson in that conversation? A. Yes, sir.

Q. What was said about that? A. To the effect that Breen would like to get it delivered to him instead of to Dobson.

Q. Now, you told us in the first place on your direct examination that you had an impression that you had seen the original letter and you started with the word "impression." As time went on the letter was spoken about by all concerned

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as though you had actually seen the letter itself, and that seems to have been assumed from that time on. Now, I wish to get a definite statement from you, in view of your examination, whether it is an impression whch you have or whether it is a fact—what we call an independent act of memory, act of memory; that you think or believe or recall having seen the letter? A. Well, that is all I can say. I do not recall it as an independent act of memory, if I get your meaning—that is, as I would remember getting married, if I were married, or something of that kind. I do not remember that letter. 662

Q. Well, now, let me make clear to you, for the purpose of my question, the fact that you are entitled to an aid to your memory, and when we say an independent act of memory we still mean an independent act, fortified, supplemented, or reminded by seeing the paper and the signature. Now, I want to know whether, with that paper to prompt or aid your recollection, whether you now have an independent act of memory, or whether it is only an impression, as it started? A. Well, the best of my recollection is that I saw 663 that letter and had it sent up to Mr. Nixon by the messenger.

Q. Well, the next thing that came along was the question of having seen the Comptroller. As I understand it, you got in there after the committee had started its session? A. Yes, sir.

Q. And on this particular day the Committee, which included the Mayor and a number of public officials, was holding its session in a large room of the Comptroller's office which adjoins his smaller

664 and more private office; is that it? A. Yes, what they call a hearing room.

Q. Now, did you have any object or purpose in going into the session, as it has been termed here, and paying your respects to the Comptroller and letting him know that you were there on that morning; have you any recollection? A. No recollection of any object for going in there at all that morning.

Q. According to your knowledge and experience, is not it a fact that that day was one of the heavi-
665 est days for this budget committee work in the history of the City of New York, so far as you know it, in your experience? A. Yes, it was rather unusual, I think, because they began early in the morning and they were at it all day.

Q. And when we have talked here of the end of the session being some time after one o'clock, we are only speaking of the morning session, aren't we? A. That is all.

Q. And if I am correctly informed, the evening session went past 6:40; that seems to be sure? A. Yes, sir.

666 Q. Are you in a position to say that you remained there until 6:40, or it finished before you went away? A. Why, no. I think I remained there until the meeting was over, but I am not certain as to that. That is not impossible; I mean there is nothing to impress me one way or the other.

Q. I am not suggesting to you that 6:40 was the end of the meeting. I am suggesting that to you only as an hour to which you will assume that the meeting at least extended. Now, were you at the Comptroller's office up to 6:40 on that night? A. I could not say the hour, but I think so.

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Q. Was this the budget for the City of New York upon which they were engaged that day? A. Yes, sir.

Q. Now, if I understand your direct testimony correctly, you have no independent recollection of having any conversation with the Comptroller on the subject of this letter other than that you spoke to him on an occasion either at lunch or before lunch; am I right in that respect? A. Well, I say I might have spoken to him when I said I read the letter to Commissioner Nixon; that may have occurred before lunch or at lunch.

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Q. But as you started to give us your recollection you started with the luncheon conversation, didn't you? A. Yes, I think possibly I did.

Q. Without fixing it definitely as taking place at luncheon, it was the the conversation at luncheon or a conversation at luncheon that was chiefly in your mind, was it, when you gave your testimony in the first instance? A. Yes, sir.

Q. And unless it had been suggested here to you in the form of questions, had you any independent recollection at all of having any conversation with Comptroller Craig by walking into the session? A. What do you mean?

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Q. (Question repeated) And unless it had been suggested here to you in the form of questions, had you any independent recollection at all of having any conversation with Comptroller Craig by walking into the session? A. No, sir.

Q. Do you remember a single thing, as an independent act of memory, not that it may have been one part of the day or it may have been another, as you sit on the stand there now, haven't you got an independent recollection of having said anything to the Comptroller other than to pass the

670 time of day, or to pay your respects when you walked into the session? A. I may have spoken to him.

Q. That is what I am after. In other words, if you had given him your own version of the events of that day, do you say that you have any recollection or anything that really amounts to any recollection of any incident prior to luncheon on that day? A. No, sir; not at that time.

Q. And these things that you have been answering here, as you have been politely but firmly
671 crowded from point to point, they are the mere efforts to keep up with the possibilities that you may have had a conversation—that you may have had or may not. Is that a correct description of it? A. Why, at any particular time; yes, sir.

Q. Was Mr. Craig, so far as you observed, by the proximity of your own room and your desk in the hearing room, was he in continuous session from the time that you arrived on that date up to the time that the Committee adjourned for luncheon; I mean, was he physically and corporeally in the room where the meeting was being held, so far
672 as you could observe? A. Yes, sir; he was chairman of the committee.

Q. Now, is it a fact, after having gone over the matter, so far as the question have developed here, that you gave out these flimsies before you talked with Mr. Craig upon the subject of the letter; is that the fact? A. I think it is.

Q. And by saying you think it is, that is the best of your recollection? A. Yes, sir.

Q. And is it the fact that any communication going out of the Comptroller's office, when sent out in the regular and usual course of business, that the copy of the communication does lie open

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on the desk, so that it may be seen and observed by any one being in the office upon business, after they have passed two strong-armed officials in the outer room? A. Why, yes, sir; they lie right on top. They may lie in a basket or on the desk in which they are filed away; something of that kind.

Q. Something has been said to you as to what is customary, and so forth. Do you know of any right or privilege that you would have as Secretary of the Finance Department to withhold such a communication as this from publication? A. No, sir. 674
If requested, you mean?

Q. Yes; if requested by a taxpayer for a decent and orderly purpose? A. No, sir.

Q. The word "understanding" was used here. I am not entirely clear whether it was used by you or used by the questioner, whether by the Court or counsel on the other side. I want to direct your attention to what we observe of that in its colloquial or common significance, as distinguished from its real or generic significance. Did you ever have any word of mouth agreement, direction, instruction, or any thing in the nature 675
of an order or direction, on the subject of giving out any matter for publication in that office from the Comptroller? ? A. You have a long lot of words in there.

Q. Well, Mr. Kerrigan, have you done anything more in that office with respect to the passing out of the stuff for the newspapers, and in passing out this letter particularly? Did you do anything different than has been done, from your own knowledge, in the City of New York, with respect to the City Departments from time immemorial? A. No, sir.

676 Q. Did you ever have any word with the Comptroller on the subject of what you should or should not give out in the way of giving news out to the newspapers? A. Why, that was usually left to me.

Q. And by being left to you you mean that you did it? A. I did it; yes.

Q. Now, this seems to be a matter of considerable importance in this case, the shadings of words. Now even the words "left to me"; do you mean by that that you did it on your own mind and your own heart, or do you mean that somebody
677 told you to do it, directly or indirectly? A. No, sir, that was whatever in my judgment I thought should go out in the nature of a report or a letter or anything of that kind; I was at full liberty to use my own judgment and put it out.

Q. In other words, you regarded that as the business of the Secretary of the Department of Finance of the City of New York? A. Yes, sir.

Q. Now, this is not a case of modesty. This is not a case of bowing the knee to any one. I ask you whether, in the course of your business as Secretary of the Department of Finance, whether
678 you were under Mr. Craig or whether you were not, it was in your power, jurisdiction and course of business to give out for publication what you wanted to? A. Yes, sir.

Q. Did you need to have any understanding with anybody? A. No, sir.

Q. Did you need to have any directions? A. No, sir.

Q. And did you, in this instance, act entirely upon your own responsibility in doing what you did? A. Yes, sir, I did.

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Q. And when you did it, did you know that if you did not do it somebody else would do it; that is to say, if they did not get it from your end of the line, they would get it when it was read from the other end of the line? A. I only did it as a matter of convenience.

Q. Now, it is not entirely clear to my mind, from the course of your examination, whether these reporters were emphasizing the question of time with you and time only, when asking for the copies of the letter. Will you please make that clear? What did the reporters say to you upon the ques- 680
tion of timeliness in getting the letter, if they did so? A. Well, when Dobson called up he wanted it right away. He wanted to know if he could get it right away, and with Breen, it was just a matter of speed—getting it over to him just as soon as I could.

Q. And you, as a reporter, or an ex-reporter, you knew that well, did not you, that it was a question of speed? A. Yes, sir.

Q. Or where they would get it first; is that it? A. Well, not altogether where they could get it first but how they could get it first.

Q. And also to get an accurate copy? A. Yes, 681
sir.

Q. Now, besides being a reporter what other positions have you filed, in connection with newspaper work? A. Well, I have been in the business office of a newspaper, the circulation office.

Q. What newspaper? A. The Brooklyn Daily Eagle.

Q. And prior to your appointment to your present position were you the Secretary of the Department of Efficiency & Economy? A. In the State, at one time; yes, sir.

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Q. And what other positions have you held? Does that comprise your employments now for some years past? A. No; I was Supervising Examiner in the State Comptroller's office under Comptroller Travis for some time, and after that I was editor of the Bureau of Municipal Research until my appointment as Secretary to the Department of Finance.

Re-direct Examination by Mr. Matthews:

Q. Do you intend by your questions on cross
683 examination to change the substance of your testimony on direct examination?

The Court: You mean "answers"; you said "questions."

Q. By your answers do you intend to change the substance of your direct examination? A. Well, just clear it up if there are any questions.

Q. Were your answers to my questions respecting the two occasions on which you talked to Mr. Craig about the Nixon letter, the statement of your best
684 recollection of those two occasions? A. Well, there might have been two occasions or one occasion; I thought I made that clear enough.

Q. I do not think so. My recollection was that you yourself had suggested that there was more than one occasion when I asked you about that. A. You asked me that and I said it was quite possible that there had been more than one occasion but I could not specify.

Q. Is your best recollection now that there was only one occasion, or that there were two occasions? A. Well, I do not know just how to answer that.

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Q. I want your best recollection. A. Well, I have a distinct recollection of one occasion. The other is not—I mean as to whether it was at a different time or at the same time. I have a distinct recollection of saying that the letter was pretty strong, or something to that effect; also of telling about Mr. Dobson and Mr. Breen, and so on, and whether that all occurred at one time or whether it occurred at two separate intervals, I could not say, because, when I came in—I know this—when I came in that morning the Committee was in session and ordinarily I might go into the Committee room and I might 686
not; sometimes there is a whole session, practically, that I do not attend. They were having open sessions and closed sessions. I never go into the closed sessions, so that I could not tell; I mean it made no particular impression on my mind whether I went into the committee room and said, "How do you do," or whether I looked in the door and see they were very busy or what.

Q. But it was not your custom, then, to go in and pay your respects to Mr. Craig every morning just to let him know you were there on the job? A. Well, he was usually looking for me, sometimes be- 687
fore I got there; so usually I looked in and let him know that I was there. That is about all there is to it.

Q. You said to Mr. Mooney that you were at full liberty to put out various items of publicity. Had that been a matter of discussion between you and Mr. Craig or had it grown up as a matter of practice at the time you took office? A. Well, yes, it was there before I went into office. Matters of record which the newspaper men called for were given

688 to them, if it was possible. Matters of opinion, or an interview, or a question from a man as to his opinion, or something like that, of course, that depends somewhat on the time and question, and how much you have to do and various other things; but if they call for a copy of any document or paper or record, why, they have access to them, and the newspaper men first of all.

Q. You refer now to routine records and statistics and things of that kind at the Comptrollers office? A. Anything; any of the papers there
689 throughout his department.

Q. Official records of the department? A. Yes.

Q. You spoke of your lack of knowledge of any right to withhold certain information. Did you ever investigate that matter, or is it merely a statement of your present recollection, without any reflection of it? A. I don't know what you refer to.

Q. Mr. Mooney asked you, if a taxpayer should come in there and ask you for any information, whether you knew of any right to withhold the information from him? A. Oh, that—I have heard that a great many times, both as a reporter and as
690 an official.

Mr. Mooney: I might say it is a matter of statute.

The Witness: As a matter of fact, if people come in and ask for papers, they get them—even the Citizens' Union.

Q. Do you recall seeing Mr. Craig later in the afternoon of that day? A. Yes, sir.

Q. How many times? A. Well, a good part of

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the afternoon. I was in at the hearing that they gave to the charitable institutions.

Q. On that day? A. On that day.

Q. Do you recall what was taking place at the morning session? A. I do not know.

Q. Can you recall how long you were in there? A. Why, as I say, I could not have been in there very long, and I do not know what they did, what they had on that morning.

Q. Who keeps the records of the meetings of the Budget Committee? A. Why, they have a stenographer who takes the minutes of the record from the 692
Board of Estimate, from the Staff of the Board of Estimate.

Q. Does he write up his notes, and is a formal record made and filed of those proceedings? A. Yes.

Q. Where is that kept? A. That is kept in the office of the Secretary of the Board and copies are given to the members of the Board.

Q. Who is the Secretary of the Board? A. The Secretary of the Board of Estimate is Joseph Haag.

Q. Was he the secretary on October 6, 1919? A. 693
Yes, sir.

Q. And is his office in the Municipal Building? A. Yes, sir.

Mr. Matthews: That is all.

Mr. Mooney: That is all.

694

ELSWORTH L. TIMBERMAN, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Timberman, where were you employed last September? A. In the office of the Receiver of the New York Railways, Mr. Job H. Hedges.

Q. In what capacity? A. As stenographer.

Q. Under whom did you work directly? A. Mr.

695 Anderson.

Q. Mr. Anderson, Mr. Hedges' secretary? A. Yes, sir.

Q. Do you recall on September 8th, doing a particular job for Mr. Anderson? A. I do.

Q. Do you recall the details of it now? A. Yes, sir.

Q. I wish you would state what Mr. Anderson asked you to do and what you did.

Mr. Mooney: I object to that, your Honor, as to what took place on September

696 8th, as utterly not connected with the defendant. It is not conceivable as to how it could be connected.

The Court: I will allow him to state what he did. What did you do, Mr. Timberman?

The Witness: On the morning of September 8th, when I arrived in the office, Mr. Anderson handed me a list and asked me to address envelopes to the names on the list. I did this and handed the envelopes back to Mr. Anderson.

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Q. Is this the list which I now show you (handing document to witness)? A. It is.

Q. And did you hand this back to Mr. Anderson, also? A. I did.

Mr. Matthews: I ask that it be marked for identification.

Marked Government's Exhibit 5 for Identification.

Q. I notice a pencil check on the face of this paper. Did you make that check? A. I did, after I had completed the envelopes. 698

Q. Did you see the envelopes after you had handed them back to Mr. Anderson? A. No, sir.

Q. Did you have any other duties in connection with those envelopes; did you do any thing else with those envelopes? A. Not with those particular envelopes, no, sir.

Q. Did you address more than one set of envelopes from this list? A. No, sir; one set.

Q. Did you see what Mr. Anderson did with the envelopes which you handed to him? A. No, sir, I did not.

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Mr. Matthews: I think that is all.

Mr. Mooney: Well, so as to save recalling him, perhaps you had better show me the exhibit for identification.

Mr. Matthews: It is merely one step in the Government's chain of proof that a memorandum of the court of about September 6th was mailed to Mr. Craig.

Mr. Mooney: There is no cross examination.

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WILLIAM J. DALY, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Day, last October, on the 6th, what was your employment, you business? A. I was a reporter for the New York City News Association.

Q. What was your assignment on the sixth day of October, if you recall? A. I had the so-called
701 traction hearing at the Public Service Commission, 49 Lafayette Street, to cover.

Q. Were you present at the conference there? A. Until I was asked to leave, yes, sir.

Q. Was the letter from Comptroller Craig to Mr. Nixon read during the time you were present? A. No, sir.

Q. Did you later see a copy of that letter on that day? A. I later saw a copy of the letter addressed to Mr. Nixon with the name of Charles L. Craig at the end of it.

Q. Did you call on the Comptroller's office on
702 that day? A. Yes, sir.

Q. About what time? A. Oh, I should judge around 12:30, maybe it was a little earlier; it was in the neighborhood of between noon and 12:30.

Q. Did you inquire there for the letter? A. Yes, sir; I inquired of an attendant, the man at the door, who resembles a retired policeman; I don't know his name. He is there every day.

Q. Did he supply you with a copy of it? A. He did not, no, sir.

Q. Did he indicate where you could get a copy? A. He did, yes, sir.

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Q. Where?

Mr. Mooney: I object to that.
The Court: Sustained.

Q. Where did you go from there? A. Room 9, City Hall.

Q. Did you find a copy there? A. I found what we call "flimsy" there on the desk, I took a copy.

Q. What was that flimsy? A. It was typewritten matter addressed to Lewis Nixon, Public Service Commissioner.

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Q. I show you Government Exhibit 2. Will you glance at that and see whether or not that—state whether or not that flimsy was a substantial copy of that exhibit? A. It looks like it. I haven't read it all now, but it resembles the flimsy which I took there on the desk.

The Court: The copy of the flimsy resembles this original?
The Witness: Yes, sir; I see one or two words here that I recognize.

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Q. Did you take one of the flimsy copies? A. Yes; I took what we call a complete set; I think there were two to make up the full letter.

Q. You mean two pages, two sheets? A. Yes, sir.

Q. What did you do with them? A. I put them in my pocket and ran to the office of the New York City News Assocation, 30 Church Street. The reason I say I ran, it rained like the mischief then.

Q. And then what did you do? A. And I sat down to a typewriter and I proceeded to write—I don't remember what I did write—I wrote some

706 thing about that letter, and pasted up the letter in short takes, as we call it.

The Court: Short takes?

The Witness: Short takes, yes, sir.

Q. You mean you copied the flimsy? A. No, sir, I used the flimsy and stripped it with the scissors.

Q. You mean you added your comments? A. Oh, no; City News men never make any comments.

Q. You mean you cut the flimsy up and turned
707 it in in that shape? A. As is.

Q. At that time what character of service was the City News Association rendering? A. News service.

Q. To whom? A. Twenty-two newspapers, including the Associated Press.

Q. Where is the City News Association located? A. Room 521, 30 Church Street, New York City.

Q. That is in this County, in this borough, this district? A. Yes, sir.

Q. Can you state which of the New York City newspapers have the City News service? A. Oh, yes; you mean now?

708 Q. No, at that time? A. Oh, all except the Evening Sun and except the New York Call and except the—well, I could go on with numerous exceptions.

Q. Well, let us see, The Times? A. Yes.

Q. The American? A. Yes.

Q. The Journal? A. Yes.

Q. The Morning Sun? A. Yes.

Q. The Herald? A. Sun and Herald at that time, I think; I don't know when the consolidation came about.

709

Q. But the Herald had it before the consolidation? A. Yes.

Q. And they together had it afterwards? A. Yes, I understand so.

Q. And the Evening World? A. Yes.

Q. The Morning World? A. Yes, sir.

Q. Telegram? A. Yes, sir.

Q. The Evening Post? A. Yes, sir.

Q. The Evening Mail? A. Yes, sir.

Q. The Globe and Commercial Advertiser? A. The Globe.

Q. The Tribune? A. Yes, the Times and the 710
Morning Telegraph and The Brooklyn Daily Eagle, and the Associated Press at 51 Chambers Street, and one or two of the German papers, I don't know which ones they are.

Q. In what way is the City News Association service rendered? A. You mean what mechanical physical way?

Q. Yes? A. They have what is known as a typewriter ticker service, like the Wall Street News Bureau, that style; not the ticker tape, but the typewritten sheet formation.

Q. I show you some sheets and ask you whether 711
this is a sample of the service that comes out at the end of the subscriber (showing papers to witness)? A. Yes, sir, and the City News also has a delivery service. They deliver manifold copies by messenger boys, but the quick service is over this telegraph system.

Q. Telegraph ticker? A. Telegraph ticker, yes, sir, from a monitor or master machine in the office, the copy is reproduced simultaneously at the ends of the telegraph wires in the newspaper offices.

Q. Can you state whether or not your article on

712 that day was sent out over the service? A. Of my own knowledge?

Q. Yes? A. No, I don't know. Once it leaves my hands it goes to the copy desk and sometimes the copy don't go out.

Q. You turn it in to the copy desk and that is as far as you know? A. Yes, sir, and as far as we can help ourselves. Then it is up to the copy desk after that whether it goes out or not.

Q. Are you able to identify the sheets you have in your hand? A. Yes, sir, I see my initials on
713 them.

Q. What are those sheets, what do they represent? A. They are what we call takes of a story or a copy under the caption of "Public Service," meaning that it is a copy which emanates from the Public Service Commission's business, and the subcaption is "Traction Conference."

Q. Can you show me the portions of this, if it is included here, which relates to the letter about which I have questioned you? A. Yes, take number 6 here; start off with "Traction Conference", the letter, I presume the letter you have in mind,
714 "The letter is as follows:" and then begins, "The Honorable Lewis Nixon" and so on, and that takes in all of take six, all of take number seven concludes with take number eight.

Q. From that can you tell what time it was turned in by you to the office? A. No, sir, not the time it was turned in, but from it, I can tell what time the operator transmitted it on the machine.

Q. Wha time was that? A. The time on take number six was 1:20 P. M.; take number seven went out, that is, the conclusion of it, was 1:27, and take number eight was finished, the operator finished sending it out at 1:47 P. M.

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Mr. Matthews: I offer in evidence takes numbers six, seven and eight to which the witness has referred.

Mr. Mooney: I object to that as incompetent and not connected.

The Court: Overruled.

By the Court:

Q. Let me ask you, more out of curiosity than anything else—at the bottom, for instance, on the first page, ready I think you said, it was 1:20, now, in the ordinary process of this kind, does 716 that appear on tickers at or about that time? A. Simultaneously.

Q. Then, that is to say, any given article proceeds as it is transmitted? A. The time is the end of the articles and not the beginning of it.

Q. Yes, at the bottom? A. Yes, sir.

Q. But I mean to say if I were reading an article—I just want to get the process in my mind—at the end of the first page I would have read that presumably at 1:20, if I were reading the article? A. Yes, sir.

Q. And then I would read the next at 1:27 and 717 the last at 1:47, if those are the correct articles? A. Yes.

Mr. Mooney: That is, if you were in the newspaper office?

The Court: In the newspaper office?

The Witness: Yes, your Honor.

Marked Government's Exhibit 6.

Cross Examination by Mr. Mooney:

Q. Now, this 1:20, that is take number 6, isn't it? A. Yes, sir.

718 Q. Now, what was the hour of take number 1? A. Let me look at the copy, I will tell you.

Mr. Matthews: Take number 1 will not refer to it.

The Witness: Take number 1 is not here.

Q. Have you got something to carry us back to take number 1?

Mr. Matthews: I have some other ma-
719 terial here, but I don't think it has anything to do with these particular matters.

The Court: Suppose you let Mr. Mooney see them?

Q. I can probably get at it in another way. If take number 6 was at 1:20, and then came another at 1:27, and the next one at 47 minutes, making 1:20, 1:27 and 1:47, it is quite plain that take number 1 was quite some time before 1:20, isn't it? A. No. sir, there is no regulation by which you can calculate that. Take number 1 might have been 7 o'clock that morning.

720 Q. Well, you have really answered the question quite as I want you to; in other words, it is quite apparent that take number 1 was at least some time before take number 6?

Mr. Matthews: I have those takes here, but they don't refer to the letter.

Q. I want to find out when he got his story? A. I began to get my story when the conference opened.

Q. And when did you commence to run? A.

721

Well, I was running all day, because it rained, and I ran from the Public Service Commission to the Comptroller and from the Comptroller to the City Hall and I ran from the City Hall to my office, and I was wet. It rained horribly.

Q. Now, you tell me when your takes came along? A. Which one?

Q. When they put you out? A. My first take is dated 12:07. That take deals with the opening of the conference and representatives who were there, and so on. Take number 2 is dated, time 12:16, and gives a little more news about the con- 722
ference. Take number 3 is dated 12:13 and that contains the reference or the subject of the exit of the newspaper men.

Q. Now, just let me read you at that stage from the stenographer's minutes that have been put in evidence here in printed form, and let me ask you if you were present, if this is what happened, in substance. Construction Commissioner Delaney said: "Well, I want to do my duty as a representative of the People of New York, but I don't want any newspaper headlines about what I say. That is why I protest against this open form of confer- 723
ence. Commissioner Nixon: My intention originally had been to have it as a closed conference. I will ask the representatives of the press to withdraw, please, and all those who do not represent companies will please withdraw. Various spectators and newspaper men left the room." That is what happened and that is what you were reporting in substance in that take, is it? A. I will read to you what I reported in this take.

Q. All right, we can read that ourselves when we get to it. I am not wanting to interfere with

724 the Government's suit. I am only keeping your mind down to certain things. Is what I have read the fact? Excuse me, you are a newspaper man and I am a lawyer, so I know just exactly what is in your mind. Now, is it a fact before you wrote on that paper that what I read you from the book took place, as a matter of fact, or would you like me to read it? A. What you read happened.

Q. And when that happened you made up your mind you were going to get the rest of the conference, if you could? A. Sure.

725 Q. When anybody tries to put a newspaper man out of a conference— A. They come down the chimney.

Q. And you had no more doubt then and you have no more doubt now but what took place at that conference was coming out of the newspapers just as quick as it could be gotten? A. I thought we would win out eventually, yes.

Q. And you realized that if there was a communication read from the Comptroller at that meeting, if you did not get it there, you would get it at the Comptroller's, didn't you? A. Yes, sir.

726 Q. And you never had difficulty in getting communications from the Comptroller's office in public matters, had you? A. No.

Q. In other words, there is no public officer that you ever ran up against yet who is sufficiently strong to hold to the idea that he will keep back something that affects the public from the public press? A. He might keep it back for awhile.

Q. But in the course of a very little time out it will come? A. In some form or another, yes.

Q. Now, we'll proceed with your takes, which are very important to me. Let us take the next one,

727

your next take on that day? A. You mean the time, sir?

Q. Yes, please? A. The time on number 4 is 12:12.

Q. What was the general subject of number 4? A. Number 4 tells about Col. Timothy S. Williams, former president of the B. R. T., appeared as an individual; it tells about John Underwood, president of the Queens County Railway, and it tells about Mr. Stimson being there.

Q. In other words, this is about the style up to the time you were excluded; you were writing as 728
it developed, and then from the time you were excluded you had to write the incidents as they had already passed, is that the idea? A. Repeat that, please.

Q. Up to the time that you were excluded, and put that on your take, you were writing straight —ahead stuff, you were getting the story out just as quick as you could? A. As it happened.

Q. But from the time that you were excluded, because you were excluded, then you had to go back and fill in your story in the next takes, isn't that so? A. What do you mean by filling it in? 729

Q. Well, I am not using newspaper expressions, because I have forgotten, but you could no longer write straight-ahead because you had been excluded? A. In sequence, you mean?

Q. In sequence, that is right; then you had to write the rest of the story? A. As we picked it up, regardless of when it happened.

Q. And as a matter of fact you did pick up almost immediately that there had been a hot letter read from the Comptroller, that was the newspaper men's expression, was it, you heard it at that

730 conference? A. It was a wet letter; it was wet from the letter press copy.

Q. And how quick did you see it? A. I saw Mr. Gleason with a letter which was wet, and he went in and gave it to, as he said, the boss, meaning Commissioner Nixon, and when he same out, I said, "Say, what was in the letter?" And he said, "That will have to come from the boss," or something to that effect; and shortly after the advent of the letter, the conference was over, and it occurred to my mind—if I may tell you what oc-

731 curred to my mind—

Q. Certainly, I am cross-examining you. You may not know it, but I really am? A. It occurred to my mind that whatever was in that letter might have broke up that meeting, and I decided to wait for the letter; and I hung around, as we say, and Mr. Gleason said, "No, you cannot have a copy of the letter." I said, "I am going to see your boss." When the coference was over, I went in to Commissioner Nixon and I asked him for a copy of the letter and he said I could not have it. My recollection is that he said it was from Comptroller Craig

732 —yes, from Comptroller Craig, and I did the next best thing.

Q. And what was that? A. Went down to Mr. Craig's office.

Q. You saw stenographers at work there, of course, as usual, in the room there that morning? A. In the conference room?

Q. Yes? A. Yes, I think so.

Q. Now, can you tell us, please, about what time of the day it was when the newspaper men were excluded? A. That would be guessing, Mr. Mooney; I think it was around 11:30.

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Q. Well, the stenographic minutes showed that the conference commenced at 10:40. It was called for 10:30 and it commenced at 10:40; and they have exactly 23½ printed pages of matter there, part of which are these letters. Does that help you to fix the time at all? A. 10:40?

Q. Yes? A. I think that about makes me right; I think about 11:30 we were asked to withdraw.

Q. Now, as I understand your story of the letter, which you observed and which is now in evidence, you could tell it by your eyesight that it had just come out of the letter press function; you could 734 tell it was wet? A. It was wet, Mr. Mooney.

Q. About how far away were you from it? A. Oh, I stood right next to Mr. Gleason.

Q. Now, you are able to tell us something which only appears by inference from the other witnesses, and that is, the actual fact that Mr. Nixon did not have the letter when the conference commenced; that he received it before he asked the newspaper men to get out of the room, and that if he read it, as now seems plain, that he read it after you had gotten out of the room. Those are the facts as you know them to have taken place? A. Yes, sir. 735

Q. Can you tell us about the hour? I think you have been asked about it already, but you saw this come into Mr. Gleason's hand and him passing it up to the Commissioner. A. No, I did not see him pass it up to the Commissioner. He went up to a little flight of stairs, into a door which led to a rostrum or desk where the Commissioner sat.

Q. Now, it is quite plain, is it not, that that conference was, in your opinion as a newspaper man, and engaged in the particular branch that you were engaged in, the fact that it was a conference touch

736 ing upon the traction situation, and that it was a place to which public officers had been invited, that it was a matter of very strong public interest, wasn't it? A. I thought so.

Q. And it was only a question of how quick and how definite you could get the news out? A. Yes, sir.

Q. Now, have you finished the takes there? A. I finished them, Mr. Mooney, as far as I handled the story.

Q. Is it the number 5 there, have you got number
737 5 there? A. Yes, sir.

Q. Will you just give us number 5? A. Number 5 was 1:16; is that all you wanted, the time?

Q. Yes; now we have all. Will you tell us, please, now, what time your matter has to go over the wire to be in time for the afternoon edition of the papers? A. That depends upon when the final edition of the afternoon papers is printed.

Q. In other words, it works backwardly, doesn't it, so that your time of getting the material in for publication depends upon the number of editions and the hours at which those editions come out?
738 A. Yes, sir.

Q. Well, now, so as to shorten my examination as far as I can, and without putting one newspaper ahead of another, will you tell us what the ordinary hour is for real news, afternoon newspaper, for you to get your stuff in? A. The City News recognizes no ordinary hour. The City News is open from 7 in the morning until 3 the following morning and every hour is the same as any other hour with the City News, because they supply morning and evening papers.

Q. Perhaps you can answer the question which

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I really have in mind, although perhaps I am not phrasing it correctly. It is as follows: What is the latest that you can get your stuff over the wire for publication in the afternoon papers in New York? A. In summer or winter?

Q. Well, at this time, October?

The Court: October 6th, at that time?

A. Well, that, Mr. Mooney, depends upon the character of the news and, God forbid, but if some one shot President Wilson, the papers would keep open till 7 o'clock, perhaps, or 6 o'clock, or would, what we call, make over.

740

The Court: He means normally.

Q. I will take a specific instance. Let me take this specific instance—your take number 6 which went over the wire at 1:20, will you please tell us what issue that would normally go into? A. Different newspapers have different edition times, and I would have to be familiar with the edition times of them to answer your question, but that time of day should reach every evening newspaper.

Q. Up to half past one a man has got a pretty good chance? A. Oh, up to 4 o'clock.

741

Q. Now, one of your takes refers to the order of Judge Mayer? A. That is not mine, Mr. Mooney.

Q. It is not? A. No, sir; the City News Association has a man in this building, and if you look on that you will see his initials on there.

Q. Did you personally hear of the order of Judge Mayer on that day? A. No, sir, not till I read the evening paper going home on the subway that night.

Mr. Matthews: I offer in evidence the takes to which Mr. Mooney referred.

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Mr. Mooney: I would be more happy with respect to your offer if you told me why you offer them now and not before?

Mr. Matthews: My only theory of it is this, and I want the record to be complete on the examination of this witness—your questions with respect to the takes and his answers as he gave them to you, will not be complete in the record without the exhibits themselves.

Mr. Mooney: What I would like to do under these circumstances is to let the actual marking of these papers be reserved, say, until the next session, and in the meantime I will look them over.

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The Court: The Clerk will mark them for identification.

By Mr. Matthews:

Q. I think he referred to, and included, take 5; is that correct? A. I would have to look at them to answer it.

Q. 1 to 5 inclusive, is that right? A. Yes, sir, and includes the letter.

744

Mr. Matthews: The letter was included in another offer, 6, 7 and 8.

Marked Government's Exhibit 7, for identification.

Re-direct Examination by Mr. Matthews:

Q. You were asked by Mr. Mooney concerning the heading on the takes, "Public Service." As I understand it, takes 1 to 5 inclusive relate to infor-

745

mation secured by you at the office of the Public Service Commission? A. Yes, sir.

Q. And takes 6, 7 and 8, that is, Government Exhibit 6, included only the letter which you procured, the flimsy which you procured at the City Hall, room 9?

Mr. Mooney: I am obliged to tell you, if you press your question that way, Mr. Matthews, it is an hiatus, because between those two there was matter which he wrote up in takes 4 and 5. I just throw the suggestion out in the hope of clarifying the situation. If you divide the question, perhaps you will cover it.

746

Q. Where did you get all the information contained in pages 6, 7 and 8? A. Where did I get it?

Q. Yes? A. Off the desk in City Hall.

Q. That includes only the Comptroller's letter so far? A. Yes, sir, but there may be a Public Service slug on the top of that, is there?

Q. Yes? A. Well, that means that it is a Public Service story.

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Q. What is the purpose of that? A. To give it identity when it comes over the ticker so that papers won't be floundering around with a multitude of things. They will know this is a Public Service subject or topic.

Q. But that does not mean that it came from the Public Service Commissioner's office? A. No, sir.

The Court: It relates to the subject rather than the place?

The Witness: Exactly, yes, sir.

748

JAMES ENGLANDER, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Englander, on October 6th last, were you connected with The Tribune as a reporter? A. Yes.

Q. Did you write a story on the so-called Craig-Nixon letter for your paper? A. Yes, sir, I did.

Q. What was the source of your information for
749 that story? A. Why, I got the City News copy in my office; I used that mainly for that.

Q. Have you previously produced the copy of the Tribune for October 7th, 1919, in which that story appeared (handing paper to witness)? A. What do you mean by "previously produced"?

The Court: He means before to-day.

The Witness: I don't believe I have.

Q. Well, is that a copy of the paper? A. That appears to be, yes.

Q. And does it contain the story that you wrote
750 concerning the Craig letter? A. It does, yes.

Q. You say you got your information as to the text of your letter from the City News? A. From the City News, yes.

Q. Is The Tribune a newspaper of daily and general circulation in this City and County and State? A. Yes.

Q. Was it at that time? A. Yes.

Mr. Matthews: I offer in evidence the copy of The Tribune identified by the witness.

The Court: Overruled.

751

By the Court:

Q. You say you got it from the copy of the City News? Was that copy delivered to you? A. No, it came over the machine.

Q. You got it from the so-called ticker over the machine? A. Yes, sir.

Q. And do you remember what hour you got it? A. Why, some of it was, I believe, already coming over the ticker at that time and I waited until the letter was complete.

Q. Were you at the Tribune office? A. I was at 752
the office.

Cross Examination by Mr. Mooney:

Q. Mr. Englander, you relied, in part, upon the City News, but not entirely, did you? A. No, just for the text of the letter.

Q. For instance, this article referred to the fact of the issuance of the order. It says here, "Judge Mayer moved rapidly when the condemnatory nature of the letter was brought to his attention." Where did you get that from? A. Why, the order
was over here in the building, Federal Building. 753

Q. Was that reported by one of your men or did you come over and see it? A. I saw a copy of the order here.

Q. And at what time did you see that? A. Why, I could not tell the exact time; it was sometime after I got this City News copy of the letter.

Q. Well, it is a fact then, that the order of Judge Mayer was entered before the publication of the letter in your paper? A. Certainly.

Q. And from whom did you get the information that "Henry L. Stimson, counsel for Job E. Hedges,

754 receiver for the New York Railways Company, who had heard the letter read at the conference, consulted with the Judge?" A. I don't remember that particular part.

Q. Well, "Who soon afterwards signed an order entitled, 'United States of America, plaintiff, against Charles L. Craig, defendant,' and which read," and then giving the order. You got that intelligence certainly either around this building or the chambers of the Judge over in the Woolworth Building? A. I might have gotten it at those two
755 places, or from some other reporter working on the case. There are various sources of information.

Q. Really, we are not making very much progress on it because your memory is not very distinct about that part of the item, is it? A. No, it is not.

Q. Have you been called before the Grand Jury under a Grand Jury subpoena and asked to go over to Mr. Matthews' office? A. I was over to Mr. Matthews' office.

Q. Did you go over there on a Grand Jury subpoena? A. I don't know just what the document was.

756 Q. Something that was served on you? A. Something calling for my appearance, whatever it is.

Q. At any rate, you were not taken in before the Grand Jury, but sat down and had a nice little talk with Mr. Matthews? A. I did, yes, sir.

Q. And when you got through with that talk he let you go? A. Yes.

Q. Did you sign a paper for him? A. You mean a statement?

Q. Yes? A. I don't believe I signed a statement.

Q. Have you got that subpoena or paper that you got, that was served on you? A. I don't know.

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Q. Well, do you recall that it was a John Doe and "in contempt," that it said that on the corner of the Grand Jury subpoena? A. I don't recall.

Mr. Matthews: That is all.

ALFRED W. PIERCE, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews: 758

Q. Mr. Pierce, on October 6th, 1919, were you an Evening Sun reporter covering the City Hall? A. I was.

Q. Do you recall the so-called Craig-Nixon letter on that day? A. Yes, sir.

Q. And did you write a story based on that letter? A. Yes, sir.

Q. Did you see that letter in the story? A. Practically all of it.

Q. Where did you get the text of the letter? A. I got the text of the letter from a copy of the letter 759 received in the Reporters' room at City Hall.

Q. Was your story containing the text or portions of the text of the letter, published in the Evening Sun on that day? A. It was.

Q. Have you here editions of the Evening Sun in which it was published? A. Yes, sir, those are several editions of the Evening Sun on that day in which the story, such as I wrote it, appears. There were other parts of the story that I did not write which also were incorporated in the same story.

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Q. What parts of the story came from you? A. The parts about the letter, about the Public Service Commission.

Q. And covering the text of the letter? A. Yes, sir.

Q. These editions seem to be "Sporting" and "Final?" A. The last edition of the Evening Sun that day. The second "Sporting Final" edition on the second page contains the combined story of what I wrote from City Hall and what appeared from this building, and they appeared sepa-

761 rately in previous editions and were finally put together in one complete story in the last edition that day, and that really covers everything that appears in any earlier editions of the Evening Sun. For example, this edition here (indicating) only has the one end of the story.

Mr. Matthews: I offer that edition in evidence.

Mr. Mooney: I object to it on the ground that it is not connected with the defendant.

Marked Government's Exhibit 9.

762

Q. Is that your end of it? A. No, that is from this building.

Q. The complete final I will not offer because he says it did not contain his story? A. The letter got left out of that edition.

Q. Is that a complete paper?

Mr. Mooney: What is that called?

The Court: This is the complete final with five stars.

Mr. Mooney: He says the letter got left out of that complete final five stars edition.

763

Q. I show you what appears to be the "Night Final" with "Wall Street Prices" and ask you if that contains your story with the text of the letter (handing paper to witness)? A. Yes, sir, that contains my story with the text of the letter. This edition called the "Night Final" is earlier than the "Complete Final." The first thing in the Evening Sun was the "Night Final" story about the letter and then in the "Complete Final," the next edition, was the story about the contempt charges being started, and then in the last edition, the "Sporting Final," both stories were hooked up and put in here. 764

Mr. Matthews: I offer this "Night Final" in evidence.

Mr. Mooney: Same objection as to the last one.

The Court: Yes, overruled.

Marked Government's Exhibit 10.

Mr. Mooney: Exception.

Q. Is the Evening Sun a paper of general circulation in and throughout the City, County and the Southern District of New York? A. Yes. 765

Q. And was it on October 6th, 1919? A. Yes.

Cross Examination by Mr. Mooney:

Q. Will you tell us as near as you can the time that the Night Final gets on the street for sale? A. On the date in question the Night Final should have been on the street, downtown, at about 3:30 P. M.

Q. And what time does the Complete Final get on the street or what time did the Complete Final

766 get on the street at about that date? A. I should say about 4:30.

Q. Now, who was covering the story over here, if you know? A. I understand that our man regularly assigned to cover this building, I forget his name.

Q. Well, anyway, he was your regular man? A. Yes, he was our regular man in this building for years.

Q. Were you over at the transit conference at all? A. No, sir.

767 Q. You just awaited the events over in the City Hall? A. Exactly.

Q. On the theory that anything and everything concerning the public interest relating to the franchise situation would find its way in there in the proper time? A. I hoped it would.

Q. Well, and it is a reasonable expectation, isn't it, in the pursuit of your business, that matters that relate to public affairs find themselves, in traction matters for instance, into that room, isn't that so? A. Very many do; I would not say all of them, but much of them.

768 Q. It is what you might expect and what you did expect and that is what happened in this case, that the letter came over there? A. The letter came over there, yes.

Q. Have you been called before the Grand Jury under John Doe subpoena? A. No, sir.

Q. In this case? A. No, sir; I was subpoenaed to come here as a witness.

Q. Yes, but I mean before this, sometime ago? A. I was subpoenaed originally several weeks or months ago and I brought over the papers that we have just examined here.

Q. Did you look at the subpoena then to see

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whether it said in the corner, "John Doe, Contempt of Court"? A. No, sir, I did not look. A subpoena came to my office and my office handed it to me and said, "Here's a subpoena for you to take care of," because it was my story, and I took the subpoena and came over.

Mr. Mooney: That is all. Without recalling the witness, I will crystallize my objection to this paper which was offered in evidence, Exhibit 7, for identification, to the last line thereof as follows: "The Comptroller, however, issued copies of his letter to Commissioner Nixon." 770

The Court: Is that your only objection?

Mr. Mooney: That is the only objection.

The Court: I will take the paper with that excluded.

DANIEL A. BREEN, a witness called on behalf of the Government, being duly sworn, testified as follows:

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Direct Examination by Mr. Matthews:

Q. Mr. Breen, what was your business on October 6th, 1919? A. Evening World reporter.

Q. Did you cover the City Hall on October 6th? A. Yes, sir.

Q. Do you recall a conversation with Mr. Kerrigan in which you learned of the so-called Craig-Nixon letter? A. I do.

Q. About what time of the day was that? A.

772 Around noon, I would say, I cannot exactly place it.

Q. I wish you would state the substance of that conversation? A. I happened to be in the office on another matter and I met Mr. Kerrigan and he voluntarily showed me a copy of that letter. I read it and I then remarked, "It is pretty hot stuff," and he said he was going to send out copies over to City Hall, and I said, "I will be there when they arrive," and I was.

Q. As near as you can fix it, it was around noon?
773 A. Around noon, yes.

Q. Where did you go from there? A. Now, I have been trying to recall just where I went. I think I went to the City Clerk's office. I think I was away one-half to three-quarters of an hour before I went back, and when I reached City Hall, the flimsies had arrived and the other men were discussing it.

The Court: You mean the other reporters?

The Witness: Yes, in room 9.

774

Q. Did you get one of the flimsies? A. Yes, sir.

Q. Had you been in the Comptroller's office on an earlier occasion that day than the time you just mentioned? A. I had not.

Q. You went there only one time that day? A. Yes, sir.

Q. Did you, after you got to the City Hall, and got a copy of this letter, write a story based on it? A. I did.

Q. And use the flimsy as part of the text of your story? A. I did.

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Q. Was that thereafter published in the Evening World? A. It was.

Q. Is the Evening World a paper of general daily circulation throughout the City and County and Southern District of New York?

The Court: City and County of New York.

A. I don't know anything about the Southern District. I know the City and County of New York.

776

Q. And also in the State of New York? A. I presume so.

Q. Have you a copy of the paper in which that story appeared? A. I have (producing paper). The part of the story which I wrote is on the second page. This is the Final Edition which is on the street at 4:30. The story which I wrote made its first appearance in the latest extra which is on the street at 2:30. My part of the story in this last edition, which was subordinated by subsequent developments, is on the second page and the contempt proceedings lead the story.

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Q. Is the text of the letter there set out? A. Why, a very small part.

Mr. Matthews: I offer the paper in evidence; it has already been marked for identification as Government's Exhibit 4.

Mr. Mooney: That is the same one that was identified by Mr. Dobson, isn't it?

Mr. Matthews: Yes, number 4.

Mr. Mooney: I object to that on the ground that it is not connected with the defendant.

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The Court: Overruled.
Mr. Mooney: I except.
Marked Government's Exhibit 4.

Q. Did you at any time talk with Mr. Kerrigan on that day concerning this letter? A. Not that I recall.

Q. Do you recall telephoning him? A. No, I do not.

Cross Examination by Mr. Mooney:

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Q. Now, Mr. Breen, this final edition, I got the hour as 2:30? A. 4:30.

The Court: There was an earlier edition, Mr. Breen said came out at 2:30.

Q. And we haven't got that earlier edition in court, so far as you know? A. So far as I know, no.

Q. So that was a mere passing reference to an earlier edition of the paper, regardless of what was in it, is that so? A. I testified that the story that I
780 wrote did not contain the contempt proceeding, that the story that I wrote that appeared, that was on the street at 2:30.

Mr. Mooney: Then I am going to ask to have that stricken out, your Honor, because there was confusion in that way. I could not quite get the 2:30 and the 4:30 editions clear. May I have struck out the statement now made which was only made to correct what had gone before, that his story appeared on the street at 2:30, because we

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have no paper here nor material to address our questions to. I do not think that ought to stay in without some foundation for it.

The Court: I will strike out the 2:30 edition.

Q. Did you cover the contempt part of it as well as the City Hall end of it? A. No, sir.

Q. And did you have anything in your article about—well, you put your finger on your story, please? A. My story would begin there (indicating). It is a question whether it does; after a 782
story goes into a newspaper office, it is very hard to tell what would happen to it, and it is hard to tell where it does begin. Sometimes you have got to be very careful in saying just where your story does begin. The best way to answer that would be to say that the Craig letter begins here (indicating) and it was the Craig letter on which my story was based. My story had an introduction; then came the Craig letter, and then I suppose when the later developments came along, this would lead and then the Craig letter followed.

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Mr. Mooney: I was going to ask to strike out "later developments."

The Court: Instead of "later" say "when the matter of the action of Judge Mayer"—put it that way to identify it.

Q. In other words, you are not testifying to time in this action, as a matter of knowledge; you are only dealing with it offhand? A. I don't know as I understand you.

Q. You have no particular point of knowledge as

784 to time? A. No, I am just speaking of the mechanics in my office.

Q. You have stated, in substance, in answer to the questions that have been put to you all that you know about this matter, have you? A. Yes, sir.

Q. In other words, the questions that have been put to you by counsel have brought out substantially all that you know about this matter, have they? A. I think so.

785 Re-direct Examination by Mr. Matthews:

Q. Are you still with the Evening World? A. Yes.

Q. Can you get for us a copy of your earlier edition? A. Why, I suppose I could. I have to state to my office what the object would be.

Q. We can send a subpoena up there? A. I would rather have you do that, then. I would have to state the reason for the request.

Mr. Matthews: That is all.

786 Mr. Mooney: That is all.

The Court: We will adjourn until 2 o'clock to-morrow and sit to-morrow until 5.

Adjourned at 6:55 P. M. to May 11, 1920, at 2 P. M.

787

New York, N. Y., May 11, 1920,
2 o'clock P. M.

Same appearances.

HAROLD A. VIVIAN, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Vivian, on October 6th, 1919, were you a reporter for the World; the New York World? 788
A. Yes, sir.

Q. Were you at that time assigned to the City Hall? A. Yes, sir.

Q. Do you recall the letter to which reference has been made in this trial from Comptroller to Commissioner Nixon? A. Yes, sir.

Q. Did you get a copy of that letter on that day? A. Yes, sir.

Q. Where? A. At the City Hall.

Q. At what time? A. About 2 o'clock in the afternoon.

Q. I show you some papers which were pro- 789
duced by your paper and ask you if that is a portion of the letter (handing papers to witness)? A. I cannot say whether it is or not, Mr. Matthews.

Q. Is that article prepared by you? A. I have no recollection of these particular pieces of paper and they do not bear any of my handwriting.

Q. Well, what did you do with the letter after you got it? A. My recollection is that in the evening of that day I took the copy of the letter that I had obtained at the City Hall to the World office, and there used it in the preparation of the

790 story which appeared the next morning in the Morning World.

Q. Is this paper which I now hand you a copy of that edition of the Morning World (handing paper to witness)? A. Yes, sir, I believe it is.

Q. Is the World a newspaper of general daily circulation throughout this Country and State? A. Yes, sir.

Mr. Matthews: That is all. I offer the paper in evidence.

791 Mr. Mooney: We object to it upon the ground that it is not connected with the defendant, your Honor.

The Court: Overruled. You mean you offer the newspaper?

Mr. Matthews: Yes.

Marked Government's Exhibit 11.

Cross Examination by Mr. Mooney:

Q. Do you recognize the article as being your own article, in whole or in part, being Exhibit 11,
792 which has just been offered in evidence? A. My recollection is that I prepared the whole article for publication, but that the matter in it was partly my own and partly someone else's.

Q. And do you know who that someone else was? A. I am not positive.

Q. We had a reporter on the stand from the World, did we, yesterday, or was it the Evening World?

Mr. Tarbox: The Evening World.

793

Q. I call your attention to a portion of the article near the head and ask you whether you recognize the start of that as your style or substantially as the substance of your work. A. I believe I wrote that in its entirety; the first two or three paragraphs.

Q. Now, I call your attention to that sentence which commences, being the second sentence in the article, "Within two hours after Judge Mayer had asked the United States Attorney Caffey to file a formal information concerning Mr. Craig's conduct, the latter will unquestionably be summoned 794 before the Court in a contempt proceeding to explain his utterance." I ask you if that has any relation to the earlier paragraphs and where you got the information there stated, as follows: "Within two hours?" A. From whoever it was on that particular day, who was covering the Federal Building for the World.

Q. You did not come to the Federal Building yourself, did you, on that day? A. I did not.

Q. And you neither saw the original direction for the information referred to in that sentence or a copy of it, did you? A. I did not see the 795 original; whether I saw a copy or not I am not positive.

Q. I show you the paper from the files that is marked "Filed October 6th, 1919," and ask you whether that tends to refresh your recollection whether you saw a copy of that paper (handing paper to witness)? A. My recollection is that I saw some papers from this building on that day, but whether this was one of them I really could not say. I saw them only casually. They were being handled by the other reporters.

796 Q. Now, we should in some appropriate way refer to this upon the record. I don't know whether it is the custom to mark the file papers for identification.

Mr. Matthews: I take it that it is already part of the record, and it may be treated as such.

The Court: It can be referred to; it need not be marked.

Mr. Matthews: This is the order of
797 Judge Mayer of October 6th, 1919.

Mr. Mooney: And it is marked as follows, "U. S. District Court, Filed October 6th, 1919," and on the lower rim, "S. D. of New York," and it bears above the figure 16, and underneath it a line 505 below the line.

Re-direct Examination by Mr. Matthews:

Q. Just one question. You say you got that letter in the City Hall. Where in the City Hall did
798 you get it? A. In the mail box in which all such documents for the Morning World are usually placed in.

Q. In what room? A. In room 9.

Q. Is that what they refer to as reporters' room? A. The reporters' room.

Mr. Matthews: That is all.

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GEORGE D. MORRIS, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Morris, were you a reporter for the Evening Telegram on October 6th, 1919? A. I was.

Q. And did you cover the City Hall on that day? A. I did.

Q. Is room 9 the reporters' room over there? A. Yes.

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Q. Do you recall the letter from Comptroller Craig to Commissioner Nixon? A. Yes, sir.

Q. Did you get a copy of it? A. Yes, sir.

Q. Where? A. In the reporters' room; I don't know whether it was in my box or whether it was handed to me.

Q. Each of the papers over there have a box in the nature of a pigeonhole? A. Yes, sir.

Q. What did you do with it after you got it? A. My recollection is that after reading it, I called up the Comptroller's office and had a talk with Mr. Kerrigan, and then I sent it to my office.

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Q. What did you talk to Mr. Kerrigan about?

Mr. Mooney: That I object to, your Honor. There is no act of Mr. Kerrigan, particularly as to the alleged acts or fact, that would be competent to bind the Comptroller in such a proceeding as this.

The Court: I will overrule the objection.

Mr. Mooney: I except.

A. Why, the copy I had, I think was very indistinct, and there were some questions raised as

802 to whether it did come from the Comptroller's office, and I asked Mr. Kerrigan, I think, whether it came from the Comptroller's office.

Q. And what did he say? A. My recollection is he said, "Yes," and then I sent it to my office.

Q. I show you some sheets of paper and ask you if you can identify them (handing papers to witness)? A. I will say yes.

Q. What are they? A. This is a cutup copy of the letter received.

Q. Is that physically the same letter you got
803 out of your pigeonhole or out of room 9? A. I would say yes.

Q. And what then did you do with it? A. I sent it to my office.

Q. To the Evening Telegram? A. Yes.

Q. Was it thereafter the article which you prepared, thereafter published in the Evening Telegram? A. Yes.

Q. Is the Evening Telegram a newspaper of general daily circulation throughout the County and City of New York? A. Yes.

804 Mr. Matthews: I offer in evidence the pages identified by the witness.

Mr. Mooney: I object to that upon the ground that it is not connected with the defendant.

The Court: Overruled.

Mr. Mooney: Exception.

The pages marked Government's Exhibit 12.

Q. I show you a clipping and ask you whether that is the article which you prepared as it appeared in the Evening Telegram of that date (handing

805

document to witness)? A. I did not prepare the article. All in connection I did with it, I just got that letter over in the City Hall and I sent that letter to the office. That is all the preparation I had to do with it.

Q. Can you identify that as the article containing that portion of it? A. Yes, sir.

Mr. Matthews: I offer that in evidence.

Mr. Mooney: I object to it upon the ground that it is not connected with the defendant.

806

Overruled; exception.

Marked Government's Exhibit 13.

Mr. Matthews: That is all.

Cross Examination by Mr. Mooney:

Q. Did your work wholly and entirely consist of sending in to your office the parts of the flimsy letter which are pasted on these sheets, that have now been marked Government's Exhibit 12? A. In connection with this case?

Q. Yes? A. Yes, sir.

807

Q. So, unless you read the article, as an ordinary reader would do after it was published, unless that be the fact, you have no knowledge at all of the actual contents of this Government's Exhibit 13, which purports to be an extract or portion of your paper, have you? A. Only as far as that letter is concerned.

Q. In other words, you do not even know at this day whether you read the article when it came out, do you? I suppose newspaper men are more or less interested in their work as it appears, but

808 have you an independent recollection of having read the article in its entirety? A. No, sir.

Q. And you have no knowledge of the publication of it as an independent matter of your own memory? A. No.

Q. Is it a safe deduction to draw that somebody else was on the story, as it is called, with you? A. Well, if I can see the first page of the copy or the first part of the story, I could tell. I don't know whether we had anybody assigned to it or whether it was a City News story.

809 Q. I ask you something that Mr. Matthews has handed to me, and ask you whether that is the first page to which you refer and whether that gives you any intelligence upon the subject (handing paper to witness)? A. The second page will tell you.

Q. Turn to the second page? A. That I know is City News copy.

Q. And turning to the third page, is that City News? A. Yes, sir, the fourth page is also City News copy.

Q. Well, to shorten your examination, the real 810 truth of the matter is that you—that I can make better progress with some other witness upon this point? A. Absolutely.

JOSEPH HAAG, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Haag, I understand that you are the secretary of the Board of Estimate & Apportionment? A. That is right, sir.

811

Q. And as such, you have custody of the minutes of the meetings of the Budget Committee of the Board? A. Yes, sir.

Q. And you have produced here the minutes of the meeting held on October 6th, 1919? A. As requested by the subpoena, yes, sir.

Q. I wish you would indicate the pages in the volume which you have produced which included the minutes of the meeting for that day (handing books to witness)? A. This little volume is not paged from beginning to end, except each meeting. A transcript of the notes on each meeting is paged 812
separately, so that for identification I would have to—well, that is the Committee on Finance and Budget (indicating); disposition of matters on calendar on Monday, October 6th, 1919.

Q. Then follow a number of pages which include these minutes? A. Yes, sir, seven pages.

Q. Can you tell me by whom these minutes were kept, who physically did the work of keeping the minutes? A. The stenographer's name is J. H. Schwarting.

Q. Where is he now? A. Well, he is a stenographer attached to the office of the Secretary of the 813
Board, Mr. Schwarting is quite ill recently.

Q. He is still at home? A. He is, yes.

Q. He is not there to-day? A. No, he is not there to-day; has not been for at least two weeks.

Q. Do you know his residence address? A. I could get it for you; I haven't it in my memory.

Q. I wish you would. Did he do the work of transcribing the notes, also; did he transcribe his own notes? A. Well, that is the extent of the notes that he took at that session.

814

The Court: He not only took it down in stenography but does he write it out?

The Witness: He dictates it to a typewriting copyist, to a dictaphone and he transcribes it from that.

Q. Who is the dictaphone operator? A. W. J. Keuleman, he is the typist.

Q. He is still with the department? A. Yes.

Q. Is he there now? A. He is.

Q. Do you know personally anything about the
815 accuracy of the minutes of this meeting? A. No, I don't think I could identify that because I do not think I attended that session; quite sure I didn't.

Q. Would your name be here if you had been present? A. No, not necessarily.

Q. I notice some pencil marks at the top of page 1; in whose handwriting are they? A. They were made by the assistant secretary of the Board, Mr. Matthews.

Q. This is marked "recess 1:25 to 2:30 P. M." Do you know what that means, of your own knowl-
816 edge? A. No. I suspect that the Committee took a recess between those hours, luncheon recess.

Q. May I have these to mark them for identification? A. Yes.

Mr. Matthews: They will be returned after we are through with them here. I ask that these minutes, identified by Mr. Haag, be marked for identification.

Marked Government's Exhibit 14, for identification.

Mr. Matthews: That is all.

817

IRVING E. PINOVER, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Pinover, on October 6th, 1919, were you a City Hall reporter for the Evening Journal? A. Yes, sir.

Q. Did you have occasion to be in rooms 9 of the City Hall on that day? A. On that day, yes, sir.

Q. Did you there procure a copy of the letter to which reference has been made, of Comptroller 818
Craig to Commissioner Nixon? A. Yes, sir.

Q. Where did you get the letter? A. I found the letter either in the letter box of the press room of City Hall or on a desk.

Q. What time was it when you got this letter, as nearly as you can recall? A. I don't recall.

Q. What is your best recollection? A. It may have been around the lunch hour.

By the Court:

Q. What do you mean by lunch hour? A. From noon till 1 o'clock; I should say it might have been 819
well along towards lunch hour that I received my copy.

By Mr. Matthews:

Q. Between 12 and 1? A. That is my best recollection; it was well along towards the lunch hour.

Q. What did you do with the letter after you got it? A. I am not certain as to that; I cannot say definitely whether I wrote the story or telephoned it, or sent the—or simply transmitted a copy of

820 Mr. Craig's letter to my office by messenger, supplementing this latter action with a telephone explanation to my office.

Q. Is the Evening Journal a newspaper of general circulation throughout the City, County and State of New York? A. Yes, sir; to the best of my knowledge and belief, it is, sir.

Q. Was the letter thereafter published, to your knowledge, in the Evening Journal? A. My recollection, sir, is that it was not published in the Evening Journal the day the letter was made public.

821 Q. Was it published the following day? A. I do not know, sir.

Q. Can you identify the paper which I hand you as a copy of the Evennig Journal of October 7th (handing paper to witness)? A. This is a copy of the New York Evening Journal of October 7th.

Mr. Matthews: I offer it in evidence.

Mr. Mooney: I object to it upon the ground that it is not connected with the defendant.

Overruled; exception.

822 Marked Government's Exhibit 15.

Cross Examination by Mr. Mooney:

Q. Do you recognize the article as being entirely of your production; in other words, are you the only man who worked on the article? A. Well, when?

Q. Prior to its publication, prior to its publication on October 7th, 1919. Did anyone but yourself take part in the composition of any of the matter as it now appears in the paper, if you can say? A. I had no part, so far as my memory goes, in the

823

preparation of the article in the New York Evening Journal of October 7th.

Q. Your work consisted entirely of taking the copy of the letter which was on the flimsy and forwarding it, in whole or in part, to the office of your newspaper; is that correct? A. Well, Mr. Mooney, I have told you, sir, that I do not recall exactly how I transmitted the story to my office on October 6th, the day the letter was made public.

Q. I intended to leave that open in my question. In other words, referring to your work, without regard to the method of its transmission, the only 824 work performed by you was the taking of the letter on the flimsy and transmitting it, or a copy of it, in whole or in part, by some means or another, to your newspaper office? A. On October 6th?

Q. On October 6th? A. Yes, sir.

Q. That is correct? A. On October 6th?

Q. Yes? A. Yes, sir.

Q. Do you know who worked on the rest of the article or story? A. I do not, sir.

Mr. Mooney: That is all.

Mr. Matthews: That is all.

825

EDWIN WESTRATE, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Westrate, on October 6th, 1919, were you on the staff of the Evening Mail? A. Yes, sir.

Q. Did you cover the letter, the story of the let-

826 ter that was sent by Comptroller Craig to Mr. Nixon on that day? A. Yes, sir.

Q. Did you prepare an article based on that letter which was subsequently published in the mail? A. To the best of my recollection I got the letter from the City Hall, took it over to the office, was there told to cut it down and prepare a short lead for it, which was to be prepared in a general story on the transit conference, and to the best of my recollection that is what I did.

Q. Where in the City Hall, did you get the let-
827 ter? A. In the reporters' room.

Q. You got one of the flimsies in that room? A. Yes, sir.

Q. Can you recall approximately the time you got it? A. It was between 12:30 and 1, more nearer 1 o'clock than, I think, 12:30.

Q. Were you in the City Hall at the time the letter got there, or did you go there and find the letter when you arrived? A. There were two or three of the reporters, one from the building at 49 Lafayette Street, where the conference had been held in the morning, up at the City Hall, and found
828 that the flimsy had not yet arrived, and from there we went—

Mr. Mooney: No, you may pause there as to what the other men did.

The Court: I understood him to say "we."

The Witness: Yes, we; and two of us, I think it was Mr. Daly and myself, I met Mr. Daly at the Municipal Building and he said the letter was going to be sent to the City Hall, and, if I recall correctly, when we arrived at the City Hall, the letter had

829

already been brought there and was being distributed. Someone was passing out the copies in the reporters' room.

Q. Was the story which you wrote, I believe you did say it was published in the Mail? A. Yes.

Q. I show you two papers, one the Evening Mail, five stars, and the other, "The Final Sports Complete," both of October 6th. Can you identify those as the Evening Mail published on that date (handing papers to witness)? A. Yes, sir.

Q. Did each of those papers contain the story 830
which you prepared based on the letter? A. I did not prepare the entire story in either case. I think I just prepared the lead which preceded the actual clippings and the resume of the letter which Mr. Craig wrote.

Q. Did you prepare the resume? A. Yes, sir.

Q. Does that appear in each of the papers which I have shown you? A. No. The story which I wrote did not appear in this edition, that is, in the five star. It was the story which occurred in the Final Sports Complete which I wrote.

831

Mr. Matthews: I offer in evidence paper referred to as the Final Sports Complete, being a copy of the Evening Mail of October 6th, 1919.

Marked Government's Exhibit 16.

Mr. Mooney: I make the same objection, that it is not connected with the defendant. Will you have the other paper marked for identification, Mr. Matthews, in which he says this did not appear?

Mr. Matthews: Certainly.

Marked Government's Exhibit 17, for identification.

832

Q. Is the Evening Mail a newspaper of daily and general circulation throughout the County and State of New York? A. Yes, sir.

Q. And was it at that time? A. Yes, sir.

Mr. Matthews: That is all.

Cross Examination by Mr. Mooney:

Q. Now, do I understand that from your answers you went to the public Service conference yourself?
833 A. Yes, sir, I went to the Public Service Commissioner's office and did not arrive there until after the time the reporters had been requested to leave the conference; therefore, I was not in the conference at any time.

Q. Of course, what you have referred to now is what you heard; that is, you heard that the reporters had been excluded from the conference? A. Yes.

Q. Now, was your visit there, was it fruitful of anything at all? A. Yes, to the best of my knowledge, sometime after the close of the conference, or
834 immediately after the close of the conference, as nearly as I recall, we were told that a statement was being prepared for the press containing a resume of some of the things, I don't know how much, of the conference it covered; I do not recall.

Q. Did you hear up there at that place that a hot letter had been read from the Comptroller, or some such phrase as that? A. I heard another one of the reporters make that statement.

Q. That is, in the group where you were gathering the news, is that it? A. Yes, I think it was in the hallway, outside of the secretary's office of the Commission.

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Q. And do you recall the name of that reporter? A. I do not. I do not believe I could identify him if I saw him.

Q. Then, when you heard that statement, you got hot-foot after the letter, didn't you? A. It was our purpose to get the letter if it was possible.

Q. But you could not get your story in in time for the five star paper, the Five Star Edition? A. I did not handle the story which was in the five star edition, and if I recall rightly, reference was made to the letter and nothing more in that story. I did not handle all of the story at any time that 836
day. I was out on the story and had sent the material into the office which I received from Mr. Nixon's office, and then came to City Hall to get what was called the Craig letter.

Q. What time did the Five Star Mail come out on October 6th, 1919, or thereabouts? What was the hour for it coming out on the street? A. I do not recall. The times of the editions have been changed so frequently in the last few months that I don't remember; I would say probably about 3:30, but I may be wrong about that.

Q. Well, it is not a question of being wrong, be- 837
cause none of us can reproduce exactly, but I call your attention to the fact that it has at its head, "Closing Prices," and I think all of us know that Closing Prices means that that contains the matter from the Stock Exchange; is not that so? A. Yes, it would be after 3 o'clock then.

Q. And can you tell what time the "Final Sports Complete" edition comes out, which has been marked here as number 16? A. Five-thirty.

Q. Is the article entirely yours for this edition or does it contain the work of others such as you have indicated in answer to another question

838 (handing paper to witness)? A. Let me look at it a moment. A very small proportion of this one is mine, only that portion which refers to the letter, I think I wrote the first two paragraphs of that story. I think all of that story that I wrote was the first two paragraphs.

Q. Well, what about the very next paragraph, which is headed, "Government's Court Order"; what do you call that heading, do you call that a subhead? A. Yes.

Q. Now, after that appears the words "After the
839 conference, Henry L. Stimson, of Winthrop & Stimson, counsel for Job E. Hedges, receiver of the New York Railways Company, called upon Federal District Attorney Caffey. Mr. Stimson had with him an order made by Judge Mayer in a proceeding entitled, "United States of America, plaintiffs, vs. Charles L. Craig, defendant." Now, is any part of that your composition? A. I do not recall; I do not remember whether I wrote that or not.

Q. Now, do you recall receiving that information, that is to say, the information contained in
840 what has just been read, first hand? A. No, I did not. I think I read it at that time in the City News copy.

Mr. Mooney: That is all.

Re-direct Examination by Mr. Matthews:

Q. Do you know who prepared the article that appeared in the Five Star Edition? A. I do not, but to the best of my recollection, I was told when I reached the office that some one had written some City News copy.

841

Q. You get the City News service in your office? A. Yes, sir.

Q. And in preparing your article, did you use in part some of the City News copy? A. I don't think that I did; I don't want to say positively. I may have had the City News copy at my side, but I used nothing, I think, in referring to the letter except the letter itself.

Q. As to other portions of the story, aside from the letter itself, did you use some of the City News copy? A. I don't recall, but the chances are that I did, if I wrote it.

842

Q. Do you recall when you first appeared at 49 Lafayette Street? A. You mean the time?

Q. Yes? A. It was about 10:30 or 11 o'clock; it may have been a little later than that.

Q. At what time was it you first learned of the Craig letter? A. That I don't remember, but I think it was about noon. I think it was while the reporters were discussing when they would receive the Nixon statement, and at that time I heard someone or something about a letter which Mr. Craig had written to Mr. Nixon, and two reporters and myself went into one of the adjoining offices and there, I think, one of them called up the Comptroller's office, and, I think, spoke to Mr. Kerrigan; and we received information there, he did, through the office, that the letter would be given out at the City Hall.

843

Q. Did you get any further details of the letter itself at 49 Lafayette Street? A. No.

Q. Other than it was a letter from the Comptroller to the Public Service Commissioner? A. No, that is all we heard except that it would probably form the best portion of the story, that it would make the best feature of the story.

844

Re-cross Examination by Mr. Mooney:

Q. That is, you have told us in ordinary language, but we lawyers are sometimes a little more precise than that. You told us what you learned there. When the letter was spoken of in the way that you described, you learned, did you not, that the letter had been read at the conference; you learned that, didn't you? A. I do not recall perfectly, but to the best of my recollection, we were told of the letter, that Mr. Nixon had received a
845 letter; I do not recall whether it had been read at the conference or not.

Q. That is, you cannot recall that distinctly, but that is your best recollection, that you did learn that it had been read? A. No, I would not want to commit myself to that statement, because I am not positive enough of the fact.

Q. Well, what caused me to ask you these later questions was that one of your answers contained the statement that the letter would be or might be the best part of the story, and I am just drawing out the surrounding language of that; that is to
846 say, a person who would make such a statement as that to you probably did tell you why or how or under what means he had learned that he thought it would be the best part of the story? A. Well, in connection with that I might say that the reference to the letter had been made just as I reached the conference of the reporters. Two or three reporters were speaking together and it was said that the Craig letter would be one of the things we would want because it would probably furnish one of the real features of the story.

Q. Was the statement made to you then at that time that Mr. Stimson, or Col. Stimson, had taken

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away the letter or a copy of the letter to Judge Mayer? A. I don't recall any reference to Mr. Stimson whatsoever.

By Mr. Matthews:

Q. You referred to a conference of the reporters. Do you mean by that when you first arrived at 49 Lafayette Street or after you had been there awhile, you went over there and joined several reporters and discussed this matter? A. After we had been there awhile, we went downstairs and 848
heard that the statement of Mr. Nixon was in the course of preparation, and down there I ran into a couple of other fellows.

Q. And that was in the conference room after the hearing had adjourned? A. I think that it was, yes.

REGINALD WILSON, a witness called on behalf of the Government, being duly sworn, testified as follows:

849

Direct Examination by Mr. Matthews:

Q. Mr. Wilson, were you on October 6th, 1919, a City Hall reporter for the Sun? A. I was.

Q. Do you recall the letter from Comptroller Craig to Public Service Commissioner Nixon on that day? A. I do.

Q. Did you get a copy of that letter? A. Yes.

Q. Where? A. In room 9, City Hall.

Q. At what time? A. About 2 o'clock in the afternoon when I got in there.

850 Q. What did you do with the letter? A. Well, I read it and used it in the preparation of a story which appeared in The Sun the following day on the traction situation.

Q. Is this a copy of the Sun in which a copy of your story appeared (handing paper to witness)? A. Yes.

Q. Was The Sun a newspaper at that time of daily and general circulation throughout the City, County and State of New York? A. It was.

851 Mr. Matthews: I offer it in evidence.
Mr. Mooney: Same objection.
Same ruling; exception.
Marked Government's Exhibit 18.
Mr. Matthews: That is all.

Cross Examination by Mr. Mooney:

Q. Do you recognize the article or story as entirely your own, Mr. Wilson (handing witness Government's Exhibit 18)? A. Yes, that is all mine.

Q. Well, will you please tell us the source of
852 your information with respect to this paragraph, "Henry L. Stimson, counsel for Job E. Hedges, Receiver of the New York Railways Company, was said to have been particularly severe in his characterization of the Comptroller's statements, and he is credited with having first drawn Judge Mayer's attention to the contents of the letter." Do you know the source of your information in that respect? A. I do not recall now exactly, but—

Q. Give it generally, will you? Perhaps the next paragraph taken with it will help. I will read the next one, in fact, if there is no objection by anybody, I will lay this right in front of you because

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the page may help. I will just call your attention to the next one after that. It says: "Within an hour after the letter had been presented to the conference, Judge Mayer issued the following order to United States Attorney Caffey," and then follows the order. Now, taking those two things together, can you give us the source of your information as to either or both? A. Why, probably I got that from the man who regularly covered the Federal Building for the Sun at that time; that is my best recollection.

Q. Had you been at the traction hearing or conference yourself? A. I had not. 854

Q. And do you know whether any man was there covering the story at the time when it was all agreed that the reporters were excluded? A. No, I don't.

Q. My associates suggest that your work is not that work of going about to get the material. You take the stuff that comes to you and write it; is that your position? A. No, not always.

Q. You do go out to cover stories, do you? A. I did at that time.

Mr. Mooney: That is all. 855

Mr. Matthews: That is all.

JOHN VAN BIBBER, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Van Bibber, on October 6th, 1919, were you a reporter for the New York Evening Post? A. Yes, sir.

856 Q. Did you prepare a story or article for publication in the office on that day based on a letter that purported to have passed from Comptroller Craig to Commissioner Nixon? A. No, sir, I sent the letter over to the office, that is all I did.

Q. Where did you get the letter? A. In room 9, City Hall.

Q. At what time? A. Between half past 12 and 1, I should say.

Q. That is, the reporter's room in the City Hall? A. Yes, sir.

857 Q. Was the letter to your knowledge thereafter published in the Post? A. I believe it was.

Q. Have you before you a copy of the Post for that day? A. Yes, sir (producing paper).

Q. Is the Evening Post, and was it then, a newspaper of general circulation in and throughout the City, County and State of New York? A. Yes, sir.

Mr. Matthews: I offer the paper in evidence.

Mr. Mooney: Object to it on the same ground as heretofore stated.

858

Overruled; exception.

Marked Government's Exhibit 19.

Mr. Matthews: That is all.

Cross Examination by Mr. Mooney:

Q. Did you attend at the conference of the parties at the Commissioner's office at 49 Lafayette Street? A. Yes, sir, I was there for a few moments.

Q. Were you there before or after the reporters were excluded? A. I arrived there just as they were being excluded; I think I left directly afterwards.

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Q. Was any reference made to a letter from the Comptroller before you left? A. No, sir, I don't think so.

Q. And did you write the whole of the story that has been shown to you? A. No, sir; I simply sent the letter from the Hall to The Post.

Q. Can you tell us what time on or about October 6th, 1919, the Complete Final Five Star Edition, such as Exhibit 19 is, got on the street? A. I think at that time, it was published about 4:15.

Q. And was the Post then, within your experience, keeping up with the other papers in getting 860
out the news so far as speed and haste went? A. Yes, sir, I think so.

Re-direct Examination by Mr. Matthews:

Q. What time, if you know, did the edition of the Post, which was shown to you, go to press? What time did you have to get your story in in order to get it into this 4:15 paper? A. Well, probably between 3:30 and 3:45.

Q. I did not catch one or two questions which Mr. Mooney asked you. Did you say then that the 861
only portion of this article for which you are responsible is the portion which purports to quote the letter from Mr. Craig to Mr. Nixon? A. Yes.

Q. The rest was prepared by someone else and you know nothing about it? A. That is right.

Mr. Matthews: That is all.

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ROBERT T. BROWN, a witness, called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Brown, have you appeared here in response to a subpoena direct to the Evening World? A. Yes, sir.

Q. Have you produced the editions of the Evening World which were printed on October 6th,
863 1919? A. Yes, sir.

Q. How many editions were there on that day? A. I believe there were five; if I am not mistaken; I have a record here.

Q. I wish you would state the number of editions and the time each edition went to press? A. Evening World, October 6th, 1919—City Edition, to press, 7:42 A. M.

Mr. Mooney: That is the Evening World?

The Witness: Yes, sir, City Edition, 10:27 A. M.; Home, 12:33 P. M., Latest, 2:30 P. M., Final, 4:19 P. M.

864

Q. And you have produced a copy of each of those papers as published on that day? A. Yes, sir.

Q. Now, merely for convenience, if you will read your list of the time they were published, I will indicate it on the respective copies? A. City Edition, to press, 7:42 A. M.

Q. And then the next one? A. City Edition, 10:27 A. M.

Q. Is that what they call the City Extra? A. City Extra.

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Q. And the time? A. 10:27 A. M.
Q. And the next one? A. Home, 12:33 P. M.
Q. And the next one? A. Latest, 2:30 P. M.
Q And the next one? A. Final, 4:19 P. M.
Q. At approximately what time do those respective papers get on the street, how long after they go to press? A. That I couldn't tell you.
Q. You don't know? A. No, sir.

Mr. Matthews: I ask that the papers produced be marked for identification.

The Court: Very good.

866

Mr. Mooney: What importance—are these of the following day?

Mr. Matthews: No, these are of October 6th.

Mr. Mooney: Well, it is not possible that the papers prior to the 12:30 edition have any relevancy in this case, anything which happened on October 6th.

Mr. Matthews: Some of them will not go in evidence, I am sure. Suppose we mark the Final, the Latest Extra and the Home Edition.

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The Court: Those three will be marked; the others are immaterial from any standpoint.

Marked Government's Exhibit 20, for identification (Home Edition); 21, for identification (Latest Extra); 22, for identification, (Final Edition).

Cross Examination by Mr. Mooney:

Q. Now, can you tell us in which of these that you have produced there is first, a reference to this

868 letter which we are talking about here, do you know? A. No, sir.

Q. You don't know that? A. No, sir.

Q. Then, while counsel is assembling the papers together, and while we are turning these pages, you might state your relation to the Evening World on October 6th, 1919. What was your position? A. Connected with the auditing department.

Q. And where did you get these hours there that you have read from your memorandum? A. They were furnished to me by the counsel to the World.

869 Q. That is a good place to go when you come and testify. Does he keep things like that? A. I guess he does.

Q. Well, you are well prepared anyway. Who is the counsel for the World? A. Mr. White.

The Court: Is that Mr. Isaac White?

The Witness: Yes.

The Court: He is right in the World office, isn't he?

The Witness: Yes.

The Court: He was formerly a reporter for them?

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The Witness: I believe so.

Mr. Mooney: Shall we make a statement upon the record or shall we ask him to go over the matter? Counsel, after going over these two papers, finds that so far as they can observe, it does not appear in the Home Edition, that the letter or a part thereof, appears in the Latest Extra Edition on the second page, and that it appears in whole or in part in the Final Edition on the front page.

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The Court: Very well, then, the Home Edition can be excluded.

Mr. Matthews: Then I offer in evidence Exhibits 21 and 22 for Identification.

Mr. Mooney: I make the same objection as heretofore.

The Court: Same ruling.

Mr. Matthews: I think one or the other of these papers has already been received, and when we go to make up our records, we can consolidate these two exhibits as referring to the same paper. I have forgotten 872 the number of the other one or which one it is.

Marked Government's Exhibits 21 and 22.

Mr. Matthews: That is all.

GEORGE WOOD, a witness called on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

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Q. Mr. Wood, you are connected with the Evening Globe? A. I am.

Q. And were you connected with it on October 6th, 1919? A. I was.

Q. What position did you hold with the Globe? A. I was at that time sitting at the head of the copy desk, handling all the copy that came in and parcelling it out from the reporters to the copy-writers, who, in turn, sent it to the composing room; virtually in charge of the news that came in.

Q. Did you have a reporter on that time and

874 on that day assigned to the City Hall? A. We did.

Q. What was his name? A. William A. Gramer.

Q. Do you know where he is now? A. Mr. Gramer is dead. He died since the first of this year.

Q. On October 6th, did you receive from Mr. Gramer the letter from Comptroller Craig or a copy of it from Comptroller Craig? A. I did, in an envelope with other things that he sent down from City Hall by messenger.

875 Q. Can you tell approximately the time you received it? A. I cannot, except by looking at the paper that you have in your office and looking at our files. I assume that it came in somewheres—

Mr. Mooney: One moment, I object to that as not disclosed.

The Court: Yes, objection sustained.

Q. Can you look at the papers to which you have referred and refresh your recollection as to the approximate time? A. I can.

876 Q. I wish you would see if those are the papers, and if they are, then see if you can refresh your recollection.

Mr. Mooney: The witness has spoken of a paper in Mr. Matthews' office. Do you mean by that a newspaper?

The Witness: This newspaper (indicating newspaper).

Q. Referring to a copy of the Globe? A. To a copy of the Globe and copies of the Globe of our files when I said the paper. My examination of our files and of this paper would lead me to believe

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that it came in somewheres subsequent to one o'clock and before two.

Q. In what state was the copy of the letter that you received? A. The letter?

Q. I mean, was it a carbon copy or a printed copy or what? A. No, flimsy, in flimsy.

Q. Have you it there? A. I have it right here, with an introductory paragraph written by Gramer—I identify his handwriting, I handed his copy right along—and there it is (indicating). It was cut up, of course, in the office, cut up by the typesetters for their convenience.

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Mr. Matthews: I offer in evidence the flimsy identified by the witness.

Mr. Mooney: We make the same objection as heretofore, that it is not connected.

Same ruling; exception.

Marked Government's Exhibit 23.

Q. Based on this flimsy, was a publication thereafter made in the Globe? A. It was.

Mr. Mooney: One moment. I object to that as involving a conclusion—it was "based upon." It is quite plain— 879

The Court: Sustained.

Q. Was the letter thereafter published in whole or in part in the Globe? A. In part, published in the Globe.

Q. Have you a copy of the Globe in which the letter in part appears? A. I assume it is the one the Judge now has.

Q. Can you identify that as the copy of the Globe of that date in which the part appears? A. I would

880 have to look at the story itself to see whether or not it is. Yes (observing), it is published in this Final Edition, five star, of October 6th.

Q. Was the Globe at that time a daily newspaper of general circulation? A. Daily, except Sunday.

Q. Throughout the City, County and State of New York? A. Daily except Sunday.

Q. Do you know whether this letter or parts of it were published in other editions on that day? A. No, I do not.

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Mr. Matthews: I offer this paper in evidence.

Marked Government's Exhibit 24.

Mr. Mooney: We make the same objection as heretofore, that it is not connected.

The Court: Same ruling.

Cross Examination by Mr. Mooney:

Q. You work with the New York City News reporters apparently, from the appearance of the bundle of papers produced here in Court? A.

882 From the appearance of those papers, I would say yes.

Q. Do you work at the same desk as Mr. Taintor did? A. Mr. Taintor was the managing editor and I was at the head of the copy desk.

Q. And how far was your desk from Mr. Taintor's desk? A. Probably the distance of this room.

Q. Now, in speaking of the hour, which you did a few moments ago, did you have reference to the hour stamp or stamps appearing on the material from the City News? A. No, I did not.

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Q. Mr. Gramer was not a regular City Hall man, was he? A. He was; he represented the Globe at the City Hall.

Q. Well, was he—when I say a regular man; was he there or was he supposed to be there daily? A. He was the man that was supposed to be there daily. He was the man upon whom we depended upon for our City Hall news.

Q. Well, of course, you depended, I suppose, in part, upon the City News, didn't you? A. As we do for everything, of course.

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Q. And you used on that day part of the City News stuff and part of Mr. Gramer's stuff? A. I saw that when I saw the copy that was handed to me by Mr. Matthews.

Q. Did you have anybody there on that day at the traction conference at the Public Service Commission's office? A. I don't recall; but I do not think we did.

Q. Did you, prior to your appearance here, receive a subpoena in a John Doe proceedings to go before the Grand Jury? A. No, I did not.

Q. Did you go to Mr. Matthews' office? A. I saw Mr. Matthews.

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Q. Well, before you went to see Mr. Matthews, had you not received a subpoena? A. I was at that time representing the Globe in Albany, and on one or two week-ends when I came back, the City Editor told me that Mr. Matthews wanted to see me. He wanted to see myself, Mr. Goofrey and Mr. Gregory and, I think, Mr. Schuster, but I didn't see any subpoena.

Q. You did not see the subpoena? A. No; I did not see the subpoena.

Q. And you did not get any nearer to the Grand Jury room anyway than Mr. Matthews' office, did

886 you? A. I did not. I went and saw Mr. Matthews to ask him to excuse me because I had to go back to Albany, and he told me if he wanted me before the Grand Jury he would let me know, and the next I knew I got a subpoena to attend Court here.

Q. Well, that excusing was to be an excusing from going before the Grand Jury, wasn't it? A. Unless I heard from him, yes; before the Grand Jury room.

Q. So that when you had that nice, little chat with him, you understood that you were on your
887 way to the Grand Jury, unless he excused you? A. I did, yes.

Mr. Mooney: So did I, but apparently, that is not the practice in New York. That is all.

CHANNING A. LEIDY, a witness called on behalf of the Government, being duly sworn, testified as follows:

888 Direct Examination by Mr. Matthews:

Q. Mr. Leidy, on October 6th, 1919, were you a reporter on the staff of the New York American? A. I was.

Q. Did you cover the City Hall for your paper on that day? A. I did.

Q. Did you get there a copy of a letter purporting to have been sent by Comptroller Craig to Mr. Lewis Nixon? A. I did.

Q. Where did you get it; in what room, and in what part of the room? A. Room 9, City Hall.

889

about 4 o'clock, I got my copy. I had seen it previous to that. I know when it arrived there.

Q. When did it arrive? A. It arrived a few minutes before one o'clock. It is my almost invariable custom to get to Room 9 at 1 o'clock and I usually ask Mr. Breen and Mr. Pinover what has happened. I got there on that day at my usual time and Breen and Pinover were there busy, very busy writing and they stopped writing to have an argument about a word that appeared in the letter from Mr. Craig. It was "momentous," and they were questioning whether it was meant to be 890
"momentous" or "monstrous," and that must have been about five minutes past one, and I looked over the letter and I don't know whether they put "monstrous" in or not.

Q. The two words were "monsfrous" and "monotonous," were they not? A. Oh, "monotonous"; yes, that is it; "monotonous."

Q. And to refresh your recollection, don't you recall that after some discussion it was decided in some way that the word "monstrous" was read and they used that word? A. I don't remember how it was decided. The word "monstrous" seemed to 891
them—

Q. What did you do with your copy after you got it? A. I stuck it in my pocket and at about 6 o'clock or 7 o'clock took it to the office and used it as a basis for writing the story.

Q. For the New York American? A. Yes, sir.

Q. Did your story thereafter appear in the New York American? A. I don't know; probably; I did not read it.

Q. I show you what looks like a copy of the American of October 7th, and ask you whether you

892 can identify it as a copy of the American for that day (handing paper to witness)? A. Yes.

Q. I also invite your attention there to an article on page 4, I believe it is, and ask you if that is substantially the article as you wrote it? A. Yes.

Q. Was the New York American at that time a newspaper of general circulation throughout the City, County and State of New York? A. I believe so.

Mr. Matthews: I offer the paper in evi-
893 dence.

Mr. Mooney: Same objection as heretofore; it is not connected.

Same ruling; exception.

Marked Government's Exhibit 25.

Cross Examination by Mr. Mooney:

Q. Mr. Leidy, did you attend the conference at the Public Service Commission, on Lafayette Street, on that day? A. I did not.

Q. Will you kindly tell us from what source you
894 got the information in the paragraph reading as follows: "Judge Mayers' request for an information to be filed by the United States District Attorney against Comptroller Craig, it is understood, was made at the request of Henry L. Stimson, counsel for Job E. Hedges, Receiver for the New York Railways Co. Mr. Stimson took the Comptroller's letter to Judge Mayer and the Judge's direction followed?" A. City News.

Q. And is that all the information that you have on that subject, what you got from the City News? A. Yes, sir, that is all.

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Mr. Matthews: May we take a short recess for three or four minutes? I have a number of witnesses whom I may be able to excuse.

The Court: We will take a short recess.

GEORGE T. VAN VALKENBURGH, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews: 896

Q. Mr. Van Valkenburgh, on October 6th last, were you a stenographer in Comptroller Craig's office? A. Yes, sir.

Q. Did the Comptroller on that morning dictate a letter to you which you later transcribed and which is now Government's Exhibit No. 2 (handing paper to witness)? A. Yes, sir.

Q. About what time in the morning was this letter dictated to you? A. Around between 9:30 and 10, nearer 9:30.

Q. And when did you transcribe it? A. Immediately after the Comptroller finished dictating it. 897

Q. How many copies did you make when you originally transcribed it? A. One yellow carbon copy.

Q. What did you do with the original, which is Exhibit 2? A. As soon as I finished transcribing the dictation I took the letter to the Comptroller in the Committee on Finance & Budget room, where they were about to hold a meeting.

Q. What did you do with the carbon which you made? A. Why, I probably directed that that be

898 filed with other traction papers. No, I am a little bit wrong about that. I had not done anything with the carbon up to that time.

Q. Well, we will trace up the original first. After you got into the committee room what occurred with respect to this letter? A. I handed this letter to the Comptroller for signature and he asked me to read it aloud to other members of the Board of Estimate & Apportionment who were present.

Q. Did you read it? A. I did.

Q. Did you then hand it back to the Comp-
899 troller? A. Yes, sir.

Q. Did he sign it? A. He did.

Q. And did he then give it back to you? A. Yes, sir.

Q. Did he give you any instructions as to what to do with it? A. No instructions except to have the letter press-copied and immediately delivered to Commissioner Nixon.

Q. Then what did you do with the letter? A. The letter was press-copied, and I am not sure that I handed it to a messenger to be delivered or whether Mr. Kerrigan handed it to him, one or the
900 other handed it to the messenger to be delivered. I am not sure whether I did it or not.

Q. At what time of day was that? A. Well, it was after 10.

Q. Did you see Mr. Kerrigan that day before you took the letter in to Comptroller Craig? A. He may have been sitting in his room, I don't just recall now; I think he was. Whether he was there when I went in or not I am not sure, but he was there when I came back.

Q. Immediately on returning from the committee room, then, with the signed letter, Mr. Ker-

901

rigan was there, and one or the other of you sent it by messenger to the Public Service Commissioner? A. Yes, sir.

Q. Now, tell me what happened to the carbon which you made. A. I handed the carbon copy to Mr. Kerrigan at that time.

Q. At or about the time the original was dispatched? A. As I recall it, at the time I was coming back from the Comptroller, because I came right straight through from the committee room to Mr. Kerrigan's room, and then from Mr. Kerrigan's room to my own.

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Q. Were you instructed by the Comptroller to give the carbon to Mr. Kerrigan? A. No, sir.

Q. Was it your usual practice and custom to hand Mr. Kerrigan carbons of important letters sent out by the Comptroller? A. If it was an important matter of public interest, yes, sir.

Q. That was pursuant to your usual course of business and your regular duties? A. Well, and using a little of my own knowledge.

Q. And Mr. Craig left that to you? A. Yes, sir.

Q. And you had done it before in other instances? A. Why, very often I might call Mr. Kerrigan's attention to some letter which I thought was of importance.

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Q. And you then called this carbon—handed this letter and the carbon to Mr. Kerrigan? A. I handed the carbon to Mr. Kerrigan; that is my recollection.

Q. That, I understand, then, was pursuant to the routine and regular course of business in the Comptroller's office? A. In important matters.

Q. Was this an important matter? A. It seemed so to me.

904 Q. Do you know what was done then with the carbon copy of the letter you gave to Mr. Kerrigan? A. Mr. Kerrigan retained it. What took place after that I could not say.

Q. Did you make, or participate in having made, carbons of that carbon copy—so-called flimsies? A. I do not think I made any extra copies of it. I think those were made by one or two other copyists in the office there at the time.

Q. At your direction? A. I do not think so. I think Mr. Kerrigan directed that. I do not recall
905 of my directing any copies being made.

Q. Did you see the copies after they had been made? A. What copies do you mean, sir?

Q. I mean the flimsy copies? A. I may have seen the office copy laying in the basket on the desk afterwards, yes.

Q. Do you know what went with those flimsy copies? A. What went with them?

Q. Yes; for what purpose they were made, and then what happened to them? Whether they were sent out of the office or remained in the office? A. I do not exactly grasp what you mean.

906 Q. Well, did you send them over to the City Hall? A. No, I did not.

Q. Did you know of their having been sent over to the City Hall? A. Yes, sir.

Q. Of your own knowledge? A. Yes, sir.

Q. At what time, as nearly as you can fix it, were they sent over? A. That I could not say; possibly around half past 12 or 1 o'clock, something like that.

Q. What time did you go to lunch that day, if you recall? A. I always go to lunch at the time the Comptroller goes out. I wait until the Comptroller leaves for lunch and then I go to lunch, so

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as to be back when he returns to the office.

Q. Well, were these sent out before you went to lunch that day? A. They must have been.

Cross Examination by Mr. Mooney:

Q. Who was present in this room where you took the letter in and it was read? A. Why, I cannot recall exactly; most of the members of the Board of Estimate and Apportionment.

Q. Well, it was a regular session, was it? A. A regular session of the Committee on Finance & Budget. 908

Q. Of the Board of Estimate and Apportionment? A. Of the Board of Estimate and Apportionment.

Q. And you know, do you, that they were then engaged in the official work of the Government of the City of New York? A. Yes, sir.

Q. I show you a paper that has been marked here 14 for Identification, which has been submitted here by Mr. Haag, the Secretary of the Board of Estimate and Apportionment, who was here and probably testified during your presence in the room. Did he? A. Yes, sir.

Q. And he produced this paper while you were sitting here waiting to be called? A. Yes, sir. 909

Q. And you believe it to be authentic, do you? A. Yes, sir.

Q. Now, referring to this paper, I will ask you whether a reference to these names serves to refresh your personal recollection as to who were present on that occasion (reading): "John F. Hylan, Mayor; Charles L. Craig, Comptroller; Michael F. Laughlin, President of the Borough of Manhattan; Edward Riegelmann, President of the Borough of Brooklyn; William J. Flynn, Acting President,

910 Borough of The Bronx; Maurice E. Connolly, President of the Borough of Queens; Frank X. Sullivan, Commissioner of Public Works; John E. Bowe, Acting President, Borough of Richmond. I will ask you whether those gentlemen were then all present, according to your best recollections? A. To the best of my recollection, they were all present.

Q. It says here, "Comptroller Honorable Charles L. Craig presided." Is it your recollection that he was presiding at the time? A. Yes, sir.

Q. And how is that indicated? Does the presid-
911 ing officer sit at the end of the big table or at the middle of the big desk? A. The middle of the big table.

Q. And is that where the Comptroller was sitting on that occasion? A. Yes, sir.

Q. And when this paper was read, was it read by you yourself? A. Yes, sir.

Q. Did you read it in a loud voice? A. Yes, sir.

Q. And in the hearing of all of the gentlemen? A. I did, sir.

Q. And the session was then in progress, was it? A. Yes.

912 Q. They had started business and you brought the letter in and the letter was then read and read aloud while they were then engaged in official business, was it? A. Yes.

Mr. Matthews: I do not get the difference between your questions and the witness' answers. I do not know to what portion of your questions his answers apply. You should make them a little shorter to give him time to answer.

913

Q. When the letter had been read, were some statements or comments made by those present within whose hearing it was read? A. I cannot repeat exactly what was said, but it was commented upon very favorably.

Q. And was it then signed by the Comptroller? A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. And after it had been read and right there in that room; is that correct? A. Yes, sir.

Mr. Mooney: That is all.

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Re-direct Examination by Mr. Matthews:

Q. What time was it when you got your letter completed and went into the Board room, the Committee room? A. Well, it is hard to remember the exact time of all those things, but I should say it was between 10 and 10:30 pretty close to 10:30, possibly.

Q. And the meeting started that morning, as was the custom, at 10:30?

915

The Court: What time did the meeting start?

The Witness: Some of those meetings are called at 10 and 10:30; at different times, when they are making up the main budget.

Q. 10:30, it says in the minutes here. A. That is probably correct, sir.

Q. And the moment before you took the stand I asked you a few questions and I understood you to tell me that when you got in and read the letter, the business meeting had not commenced. A. Well,

916 of course, I could not say what they had been discussing when I went in there with the letter to be signed. I was asked to read it. It was not my business to stop there and see what the committee was doing, but whether they had started the work on the official budget, I do not know.

Q. I thought you told me that they were assembling when you got in there? A. I don't recall that.

Q. Well, is it a fact that they were assembling, or that they had assembled then? A. I may have
917 said that they were all assembled there.

Q. Is it a fact that they were assembling, or were they all present and all in their seats when you got there? A. They were all present, yes.

Q. Were they all in their seats at the table? A. Some of them might have been standing up; the others had taken their seats.

Q. Do you recall that the Mayor was there, seated? A. Yes, sir.

Q. And that the Comptroller was there, seated? A. Yes, sir.

Q. Do you recall that Mr. Loughlin was there,
918 seated? A. Yes, sir.

Q. And had Mr. Riegelman come in at the time you got there; do you recall him distinctly? A. I am quite sure he was; yes, sir.

Q. And Mr. Flynn; did he come in? A. Yes, sir.

Q. Was Mr. Connolly there? A. Yes, sir.

Q. And Mr. Frank X. Sullivan? A. Yes, sir.

Q. And Mr. John E. Bowe? A. Yes, sir.

Q. You recall, distinctly and independently as to each one, that they were all present? A. All of them, with the exception of President Riegelman,

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and I never bothered very much whether he was around or not.

Q. Did you make a note of the comments of the letter, as they were made, after you finished reading it? A. No, sir.

Q. Was a note made at that time of the comments? A. Not to my recollection.

Q. Was it a part of the work of the Budget Committee? A. No, sir.

Q. Was it a matter that should or would have gone into the official minutes of that Committee? A. No, sir.

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Q. Can you recall independently, and as to each of the gentlemen present, what comments each separate one made on the letter? A. I could not very well, no; except that it was generally favorably commented upon.

Q. Do you recall what Mr. Bowe said about it? A. I do not.

Q. What Mr. Sullivan said about it? A. No, sir.

Q. What Mr. Connolly said about it? A. No, sir.

Q. What Mr. Flynn said about it? A. No, sir. 942

Q. You do not recall whether Mr. Riegelman was there? A. Not absolutely certain, but I presume he was there; he is noted on the record as being there.

Q. I mean at that time; you were not present up to the exact time at which he appeared there? A. I am very positive that he was there.

Q. Do you recall what he said? A. No, I do not.

Q. Do you recall what Mr. Loughlin said? A. No, I do not.

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Q. Do you recall what Mr. Craig said, if anything, in addition to what you have already testified? A. I do not, except that I read the letter and the Comptroller signed it.

Q. And told you to dispatch it? A. Yes, sir.

Q. You recall nothing further? A. No, sir.

Q. Do you recall what Mayor Hylan said? A. He said it was great stuff.

Q. Anything further? A. No, sir.

Q. Now, do you recall whether he said anything futher or not? A. I do not. I could not begin to

923 think of exactly every thing that happened. Of course, there was a general discussion and a general approval of the communication.

Q. And that is as nearly as you can recall at this late day just exactly what did happen? A. It is, yes, sir.

Q. The discussion took up some appreciable portion of time—a few moments? A. It took up a few moments.

Q. Can you approximate how long it lasted? A. I did not think this letter would have become of such great importance at that time, or I would have

924 tried to remember it a little better.

Mr. Matthews: That is all.

Mr. Mooney: That is all.

LINDLEY M. GARRISON, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Garrison, are you the Receiver in the case of the Brooklyn Rapid Transit Co., for the Brooklyn Rapid Transit Co.? A. I am.

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Q. When were you appointed? A. 31st of December, 1918.

Q. Was that a permanent appointment or a temporary appointment? A. Temporary.

Q. When were you appointed Permanent Receiver? A. My impression is, the 15th of January, 1919, but I am not positive.

Q. And did you, after you were appointed Temporary Receiver, take possession of the properties of the corporation for which you were appointed? A. I did.

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Q. And was your appointment extended from time to time to other companies? A. It was.

Q. And did you, as your appointment was extended, take possession of the properties of those companies? A. I did.

Q. Did you serve at all times as Receiver down to and including October 6, 1919? A. Yes.

Q. While you were acting as such Receiver, did you at any time deny to any official or any member of the municpial government, meaning by that the Government of the City of New York, any access to information in your hands as Receiver?

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Mr. Mooney: I object to that as incompetent and also upon the ground that it involves conclusion.

Overruled; exception.

A. I did not.

Mr. Mooney: Does your Honor understand my objection of its being incompetent? If you do not, I had better perhaps, amplify it. I intend thereby to include the objection that information communicated to

928 the officials of the City of New York does not in any sense come up to that requirement of proof which is required in a criminal case with regard to the defendant who is now on trial. We are assumed to proceed here with some observation of those rules which apply to a person charged with a criminal offense, and I assume, even if this is somewhat summary in its nature, I can imagine no more harmful evidence than evidence of this kind, character and description, by which a crime
929 is intended to be imputed to a single officer, than by asking generally whether another in an official capacity has denied access to an aggregation of individuals constituting the City Government. If my word "incompetent" does not convey that to your Honor's mind, I trust you will include that now within the objection and consider this as a motion to strike out the answer upon the grounds that I have stated.

The Court: I adhere to my ruling and deny the motion to strike out.

930 Mr. Mooney: I except.

Q. Have you at any time had an application from Mr. Charles L. Craig for access to any of the information in your possession as Receiver? A. I have no recollection of such, but I cannot deny that I had. I have received a great many communications and I do not carry them in my mind.

Q. Have you at any time denied any such application? A. I have not.

Mr. Mooney: Now, I make the same objection as heretofore; and your Honor makes the same ruling?

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The Court: The same ruling.

Mr. Mooney: I except.

Q. Have you at any time denied an opportunity to Mr. Craig to ascertain the truth with respect to the properties in your hands as Receiver?

Mr. Mooney: I object to that as involving a conclusion and as not included within the information.

The Court: I sustain the objection.

Mr. Matthews: The objection was sustained, sir? 932

The Court: Yes. I am following the letter. The letter reads, "deny to myself and other members of the Board of Estimate & Apportionment any access to original sources of information concerning the property and affairs of various public utility corporations holding franchises to operate in the City of New York." There may be some other references in the same subject-matter elsewhere, but my eye does not catch it.

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Q. Has there been, Judge Garrison, any policy of the Receiver of denying to Comptroller Craig access to original sources of information concerning the properties and affairs of the corporations in your hands as Receiver?

Mr. Mooney: I object to that as incompetent and improper, and as involving a conclusion, and not the proper way to prove a negative, if such is intended, either as to form

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or substance. By the term "incompetent" I wish to embrace therein what I said before.

The Court: I will sustain the objection.

Q. Will you state, Judge Garrison, what the policy was of the Receivership, from the time you were appointed Receiver up to and including October 6th, with respect to affording access to members of the Board of Estimate and Apportionment to original sources of information concerning the properties in your hands as such Receiver?

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Mr. Mooney: I object to that upon the grounds heretofore stated, and upon the ground that in a proceeding of this character we are not to consider policies, but acts.

The Court: Overruled.

Mr. Mooney: And that it calls for the operation of the witness' mind. I except.

A. I cannot answer it, Mr. Mooney, without using my mind. The policy was to afford the fullest opportunity to the Board of Estimate and Apportionment, the Mayor and the Corporation Counsel, and the Comptroller, to all the records—not being technical in the word "records"—but all the papers and documents and accounts in my possession as Receiver.

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Mr. Mooney: I move to strike out that answer as containing incompetent matter; containing matters which involve conclusions, containing matters that involve the Comptroller in relation to other persons and officials; and in addition to that, upon the ground that the answer of the witness as to the policy is not within the terms of this in-

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formation, nor has it any relation to the crime charged against the defendant.

The Court: Denied.

Mr. Mooney: I except. Does your Honor understand by what I have said that I intended to include and did include in the grounds of my objection that the answer does not contain any act or fact. If not, I embrace that.

The Court: I understand.

Q. I wish you would state, Judge Garrison, what was done to carry out the policy of granting complete access to the records in your hands? A. Every time that anybody came to the offices and the matter was in any way referred to me, my instructions to my subordinates were, "Give them the fullest access." 938

Q. Did you have any conference at any time with any representatives of the City? A. Oh, yes.

Q. With what representatives?

Mr. Mooney: I shall object to this if it is not directed against this defendant. We might just as well understand that my theory of the defense of this proposition, whatever the theory of the prosecution may be, we might just as well have the law distinctly marked. You cannot convict a man of criminal contempt by showing that somebody else identified with the City Government has been given information, I take it. 939

The Court: I will sustain the objection.

By the Court:

Q. Let me ask, at any time did you deny to Mr. Craig any access to original sources of information

919 concerning the property and affairs of the public utility corporations holding franchises to operate in the streets of New York, in respect of which you were, from the time of your appointment to and including October 6, 1919, Receiver? A. No.

Q. And I will enlarge that question by not confining it to access to original sources of information, but to any information? A. The answer is the same, no. In other words, I did not deny access to any particle of information that I had in my possession.

920 Q. Did you deny to any member of the Board of Estimate & Apportionment access of any kind to original sources of information concerning the property and affairs of the various public utility corporations holding franchises to operate in the streets of New York, with respect to which you were Receiver, and that question is to comprehend the time when you were appointed such Receiver to and including the 6th day of October, 1919? A. No.

Mr. Mooney: That, I submit, is incompetent and not proper as against the defendant.

921 The Court: Overruled.

The Witness: The answer is no.

By Mr. Matthews:

Q. I wish you would state, Mr. Garrison, the offers of access to records and information in your possession that were made by you to representatives of the City Government. Do not answer until Mr. Mooney has had an opportunity to object, if he wants to.

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Mr. Mooney: I object to it on the ground that any offer to any official of the City Government, other than the Comptroller, who is an official of definite powers and duties and acts within his own sphere, would be incompetent in a prosecution against the defendant.

The Court: Well, I will sustain the objection the question as framed, but I will allow the question if it is limited to the Comptroller and all other members of the Board of Estimate & Apportionment.

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Mr. Mooney: We will except to that, your Honor. Even that would not be competent and arguable.

Q. Will you state what, if any, offers or proffers of access to information in your possession you made to any member of the Board of Estimate & Apportionment during the period from your appointment down to and including October 6, 1919?

Mr. Mooney: May I ask a question voir dire?

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The Court: Yes.

By Mr. Mooney:

Q. Have you ever spoken to Mr. Charles L. Craig, Comptroller of the City of New York, in your life? A. Oh, yes; I have been talking in this Court room since I am here.

Q. Prior to that did you enjoy speech with him? A. We had a very short colloquy in the meeting of the Board of Estimate & Apportionment in December of 1919, while the Board was in session, and I

946 think that is the first time I ever saw Mr. Craig. I assume he knew who I was, but it was just a mere colloquy. I was appearing there as Receiver.

Q. In any case, it is a fair statement that you had no oral communication with him on the subject to which the question relates that has just been put to you? A. Not only a fair but a comprehensive statement. I never saw Mr. Craig to know him until that day in December, and then the oral talk was a colloquy about some petitions passed at the public hearing here.

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Mr. Mooney: Then I now frame an objection, in view of the voir dire, because any communication, if any, must be in writing, and, if so, the writing must be produced.

The Court: Yes, the counsel will produce it.

By Mr. Matthews:

Q. Did you have any communication with any
948 member of the Board of Estimate & Apportionment, in writing? A. I will have to ask a question, if I may.

Q. Yes. A. You mean either addressed to them as a body or individually?

Q. Addressed to them either individually or officially. A. Before the 6th of October?

Q. Before the 6th of October? A. I do not recall any such.

Q. Did you have any conference with any member of the Board of Estimate & Apportionment prior to the 6th of October? A. Yes.

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Q. With what members did you have a conference? A. With the Mayor.

Q. And when did you have a conference with the Mayor?

Mr. Mooney: I object to that as immaterial, what happened with the Mayor.

The Court: I will take it.

Mr. Mooney: Yesterday's proceedings were productive to all of us.

950

A. I did not intend to volunteer anything. In January of 1919.

Q. I wish you would state the substance of what was said by you and by the Mayor.

Mr. Mooney: I object to that as incompetent.

The Court: Sustained.

Q. Did you at that time offer to the Mayor complete access to any information in your profession?

Mr. Mooney: Object to that as incompetent.

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The Court: Sustained.

Q. Did the Mayor make any request of you for information, or access to your records as Receiver?

Same objection; same ruling.

Mr. Matthews: Will the Court not let me go into this at all? Is it that it has nothing to do directly with the Comptroller?

The Court: Yes; I think testimony as to conversations, at this stage of the trial,

946 think that is the first time I ever saw Mr. Craig. I assume he knew who I was, but it was just a mere colloquy. I was appearing there as Receiver.

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Same objection; same ruling.

Mr. Matthews: Will the Court not let me go into this at all? Is it that it has nothing to do directly with the Comptroller?

The Court: Yes; I think testimony as to conversations, at this stage of the trial,

952 not with the Comptroller, are not admissible.

Mr. Caffey: The statements made by the Comptroller in his letter to the Public Service Commission and the charge by Mr. Craig is that there has been a denial to "myself and other members of the Board of Estimate and Apportionment of any access to original sources of information concerning the property and affairs of utility corporations." The Comptroller in this letter
953 does not confine the charge or the denial of access to himself, but he embraces other members of the Board of Estimate and Apportionment. I submit to make relevant any occurrences between the Receiver and any other member of the Board of Estimate and Apportionment which had any bearing upon information that the Receiver might furnish members of the Board of Estimate and Apportionment—

The Court: The witness has testified that at no time did he deny access to original
954 or other sources of information to the Comptroller, or to any member of the Board of Estimate and Apportionment. That, as I have already ruled, is admissible; but at this stage of the proceedings conversations with any other than a member of the Board of Estimate it seems to me are not admissible, and I will so rule.

Mr. Matthews: That will be all, then, under the Court's ruling. You may examine him, Mr. Mooney.

Cross Examination by Mr. Mooney: 955

Q. Mr. Garrison, were you appointed Receiver by Judge Mayer? A. Yes.

Q. And were you continued as Receiver by Judge Mayer? A. Yes.

Q. Referring to the alleged contemptuous communication, the paragraph thereof reading as follows: "When the applications were made Judge Mayer in the friendly proceedings instituted by those interested in these corporations for the appointment of a Receiver of their own liking, if not 956
of their own selection, the Corporation Counsel of the City of New York," and so forth—now, I will ask you, were you appointed Receiver in a friendly proceeding? A. I do not know anything about the appointment of the Receiver.

Mr. Matthews: I object.
The Court: I will let the answer stand.

Q. Did you not know of the character of the proceedings the nature of the proceedings, at the time that you were appointed? A. No, sir.

Q. Did you have any conversation with anyone 957
with reference to your appointment before you were appointed?

Mr. Caffey: Immaterial and irrelevant.
The Court: I will allow it.

A. I did.

Q. With whom? A. With Mr. J. Horace Harding.

Q. With whom else? A. Nobody.

958 Q. And for whom did Mr. Harding speak? A. I have no idea. He was a client of the office.

Q. Did you attend before Judge Mayer before you were appointed? A. No, sir.

Q. Do you know how you came to be appointed? A. I do not.

Q. Well, you had never been appointed by Judge Mayer before, had you? A. No, sir. You mean as Receiver?

Q. Yes. A. I never was appointed anything by Judge Mayer before.

959 Q. Well, that answers the question. And it must have been a good deal of a surprise to you when you were appointed?

Mr. Matthews: I object to that.

The Court: Sustained.

Mr. Mooney: I submit that question is quite competent and proper, in view of the statement referred to in this letter. It might not ordinarily be so, and I do not wish to impress it upon you if your mind is made up upon it. I do not regard this

960 examination as having to be conducted along very narrow lines, in view of the fact of the experience of the witness and the experience of all of us in the mundane affairs that surround us—well, I will ask you were you surprised when you were appointed?

Mr. Matthews: Same objection.

The Court: Same ruling.

Q. Did you know that the Judge handed down, in connection with your appointment, a felicitation to the public of the City of New York that a

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man of your business and experience and general activities should have been induced, in substance, to accept the receivership; did you know of that?

Mr. Caffey: I object to that; absolutely immaterial.

The Court: Sustained.

Mr. Mooney: Well, of course, if this is the way this examination is going to go along, I am going to stop. I suppose that is my privilege, any way, but if this is the way, the responsibility of it rests very largely upon my learned friend, if they are going to shoot in every time I ask a question —I see they are both lined up at their bench again, the same as yesterday, when their favorite son was examined—if this is the way the examination is going to be conducted, with a volley of objections to protect these noted individuals from examination along these lines, I might just as well say now that I am not going to go very far in it. I want to know, and I state it broadly and absolutely, I am entitled to know, in view of the charge against my client with respect to this letter, I am entitled to know the circumstances and the surroundings of the appointment of Mr. Garrison as Receiver of this company, and I impress upon the Court, regardless of the form of my questions, our desire and our feeling that we are right in eliciting that information.

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Mr. Matthews: Mr. Mooney is asking questions which by no means are proper cross examination. They do not test the

964 credibility of the witness, they do not cross him on anything that was asked him on direct. Furthermore, they go far beyond the issues of this case. The information is clear; the charges are plain, and if he wants to cross examine a witness on the charges and on the issues, or to bring out from him anything that will have a bearing either upon his testimony on direct or upon the the issues in the case, no objection will be made. The two questions that have been
965 asked go back and antedate the appointment of the receiver.

The Court: I am perfectly clear.

Mr. Matthews: I have got no objection to Mr. Mooney having the information, but I do not want to make this trial a mere rehash of everything that appeared in the press relating to these Receiverships from the time they began down to the present time. I think we should confine ourselves to the issue.

The Court: I am perfectly clear as to
966 the rules of evidence, I think, and I rule that I can see no objection to either counsel interposing objections when the other counsel is examining.

Mr. Matthews: And the matter of my standing at the bar is merely for the sake of convenience, so that I can hear better. It is very difficult to hear sitting back at the table, particularly when Mr. Mooney is between me and the witness.

Mr. Mooney: Your Honor's ruling stands, I understand?

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The Court: It does.

Mr. Mooney: In view of your Honor's ruling, I abandon my cross examination.

The Court: Very good. We have to adjourn now, because I have another matter on at five o'clock, unless there should happen to be some short witness who wants to get away, or something of that kind.

Mr. Mooney: I would like to be courteous and agreeable, but if your Honor is of the mind to adjourn, let us adjourn. We have come to the end of a busy day; let us ad- 968
journ.

The Court: We will adjourn until Monday at 10:15.

Adjourned to May 17, 1920, at 10:15 A. M.

New York, N. Y., May 17, 1920. 10:15 A. M.

JOB E. HEDGES, a witness called on behalf of the Government, being duly sworn, testified as follows: 969

Direct Examination by Mr. Matthews:

Q. Mr. Hedges, are you the Receiver of the New York Railways Company? A. Yes, sir.

Q. When were you appointed? A. March 21st of last year and confirmed Permanent Receiver on March 31st of last year.

Q. From March 21st down to and including October 6, 1919, were you acting as the Receiver of the New York Railways Company? A. Yes, sir.

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Q. Did you as Receiver have possession of the properties of the New York Railways Company? A. Yes sir.

Q. And of their records, books and papers and so forth? A. Yes, sir.

Q. Have you at any time denied access to the information in your possession concerning the New York Railways Company to Charles L. Craig? A. No, sir.

Q. Have you denied access to that information to any member of the Board of Estimate and

971 Apportionment? A. No, sir.

Q. Have you denied such access, or access of any kind, to original sources of information, or any other kind of information whatsoever, in your possession as Receiver, to Charles L. Craig? A. No, sir.

Q. Have you denied such access to Charles L. Craig in his official capacity as Comptroller or as a member of the Board of Estimate and Apportionment? A. No, sir.

Q. Or in his private capacity as a citizen? A. No, sir.

972 Q Have you denied such access to such information to any member of the Board of Estimate and Apportionment? A. No, sir.

Q. Has there been any policy adopted or carried out by you, as Receiver, of denying to Charles L. Craig access to original sources of information concerning the property and affairs of the New York Railways Company?

Mr. Mooney: We object to that, your Honor, upon the ground that it is incompetent and involves a complexity and a series of conclusions.

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The Court: Overruled.
Mr. Mooney: I except.

A. I have not.

Q. I ask you the same question with respect to other members of the Board of Estimate and Apportionment?

Same objection; same ruling; exception.

A. I have not.

Q. I ask you the same question with respect to Mr. Craig, enlarging it to embrace not only original sources of information concerning the property, but all sources of information within your possession concerning the property? 974

The Court: Or any information?
Same objection; same ruling; exception.

A. Well, I answered the question as to my policy. I have not.

Q. I ask you the same question with respect to other members of the Board of Estimate and Apportionment? A. I have not. 975

Q. What has been the policy of yourself, as Receiver, and those acting under you, with respect to furnishing information to the Board of Estimate and Apportionment and its members?

Same objection; same ruling; exception.

A. I have directed all subordinates in the New York Railways to furnish all information sought by any member of the Board of Estimate, and have

976 made that promise openly in the Board of Estimate.

Mr. Mooney: I don't know just how to raise the objection to a general answer in that way other than—

The Court: This promise that you refer to was after the 6th of October?

Mr. Mooney: Then I move to strike it out.

The Court: Strike out that part of the
977 answer.

Q. My questions I intend to limit to the period from your original appointment down to October 6th, not covering beyond October 6th. A. Yes; I appreciate that.

Q. Now, have any of your answers except this last one embraced matters subsequent to October 6th, or are they all applicable to the period down to— A. (Interposing) They are all applicable.

Q. (Continuing) October 6th but not passing that date? A. Absolutely.

978 Q. Will you state what information has been furnished or what offers of information have been made by you as Receiver to members of the Board of Estimate and Apportionment during the period from your appointment down to and including October 6th?

Mr. Mooney: May I ask under *voir dire*, whether any communication has been had except in writing?

The Witness: I don't recall for the moment.

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Mr. Mooney: Then I object, your Honor. The writing should be produced.

The Court: Communications of any kind till October 6th were in writing?

The Witness: I think all of them are; I cannot speak specifically.

The Court: Well, that is your best recollection?

The Witness: That is my best recollection.

980 Q. Mr. Hedges, do you recall the entry of an opinion or memorandum by the court in the New York Railways receivership, on or about September 6, 1919 (handing document to witness)? A. I do.

Q. Is the paper I handed you a copy of that memorandum? A. Yes, sir.

Q. When was that memorandum brought to your attention? A. Why, within a day or two prior to September 8th; two or three days prior to that.

Q. What, if anything, did you do with respect to that memorandum when it was brought to your attention? A. On September 8th I signed and addressed to the other receivers three letters, which I directed my secretary, Mr. Anderson, to have delivered to the Mayor. 981

Mr. Mooney: Don't let me be rude; you are in the middle of a sentence, but since we have interrupted, I object to any statement with respect to the Mayor. This objection is very much more than formal. There is no identity, either in law or in fact, between the defendant on trial and the Mayor of the City of New York, and I submit that serious

982 injury is likely to occur to my client by the introduction into this record of matters relating to the Mayor or relating to the City of New York, as an entity separate or distinct from the Board of Estimate and Apportionment. I have given serious thought and reflection to this point, and I urge it with as little wordiness as is necessary to present it but with all the earnestness of which I am capable.

983 The Court: The only point I see is this—the letter of the defendant says, "denied to myself and other members of the Board of Estimate and Apportionment any access," and so forth. Now that takes in both the defendant and the other members of the board. Now, if this testimony is calculated, as I assume it is from my familiarity with this particular witness, to show that what you already know of the so-called Stone-Webster report, or the court's memorandum, any of which, with respect thereof, was communicated to the various members of the Board

984 of Estimate and Apportionment, it is admissible. What I will do is, I will take the testimony of the witness and reserve the motion to strike out any part later.

Mr. Mooney: Supplementing what I have said, your Honor, it is a fact in the administration of the great affairs of this city and its diverse capacities, that a matter that would or might come to the attention of an individual who occupied one relation to the city government would not come before him when occupying another. This argument is

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no tweedledum and tweedledee at all, but is made in very great earnestness—that information communicated to the Mayor, or other individuals, who, acting as Mayor, would observe, or reflect, or cogitate upon it or pass it by as the occasion required in the administration of his functions as Mayor, would assume an entirely different relation and an entirely different aspect when that same individual came to perform his duties as a member of the Board of Estimate and Apportionment; or, to be precise—because I 986
have been warned of this as one unacquainted with the details of the administration of these offices—a communication sent to the Mayor of the City of New York, or a communication sent to the City of New York, if it related to those matters that would come up before the Board of Estimate and Apportionment, would, from the very weight of the material that is called to the attention of the different offices, be laid aside without any want of respect to the sender of the communication, and would not be a 987
matter of thought or care or attention with respect to those related to the Board of Estimate and Apportionment, or to membership therein, until such time and under such circumstances as the matter would come up positively and directly in the Board of Estimate and Apportionment.

Now, the Comptroller's letter was written and was designed, as far as human thought could frame a speech, to relate to himself and to the members of the Board of Esti

988 mate and Apportionment in their capacities as such and strictly as such. I assume, from my own familiarity with this matter that a great deal of information was conveyed to that evanescent entity known as the City of New York, who may have been a clerk of no great dignity and no greater appreciation or standing. I have a belief that certain material went to the Mayor; I have a certain belief that certain material went to the Corporation Counsel. Now, if you are going
989 to assume in such a serious thing as a contempt proceeding that any of that material either came to or was accessible to this defendant, I think that you will be doing him a very serious injustice and one which your own familiarity with the great affairs of state should guard you against.

Now, it is a fact—without putting anything more than a negative fact on the record—it is a fact in the common experience of all of us that no communication addressed to the Mayor, or addressed to the city,
990 would come to the knowledge of my client, nor would it come to the knowledge of the Board of Estimate and Apportionment, which has a calendar, and anyone who attempts to interfere with that calendar, or with the due performance of the business calendar of the Board of Estimate and Apportionment, gets into serious trouble, including such penalty as he suffers from the Sergeant at Arms.

Now, I don't want to take a narrow view of this matter, but it is an important matter, and if my client is going to be buried

991 under a vast lot of material addressed to other departments of the city, he will be seriously injured, and to give point to my remarks, to which I am now addressing myself, I want to point out to your Honor that the ruling you have just made, or have indicated that you are about to make, whichever it may be, has failed to show an appreciation of the point that I am making, namely, that in the narrowest way in which I am presenting the point, no information that goes to the Mayor, no information that 992 goes to the City of New York, under such designations, would either in law or in fact come to the attention of either Mr. Craig himself or of any member of the Board of Estimate and Apportionment.

The Court: I will let the witness answer. You may reserve a motion to strike out. I have made a note of it.

The Witness: I directed my secretary, Mr. Anderson, to have delivered personally to the Mayor and the two Public Service Commissioners, Mr. Delaney and Mr. Nixon, this 993 memorandum which was sent, as I understand in a signed letter. Then I directed him to have mailed to each member of the Board of Estimate and Apportionment, the same day, a copy of this paper which you handed me.

Mr. Mooney: I move to strike that out, your Honor.

The Court: Denied.

Mr. Mooney: I except.

The Court: Better have this marked for identification.

994 Mr. Matthews: I ask that the paper be marked for identification.

Marked Government's Exhibit 26 for identification.

Mr. Mooney: I might be accused here of being unfair if I did not point out to your Honor that the answer is complex and in its latter part relates to the act of another and, as such, of course, it is hearsay, so that you have before you now two objections.

The Court: Yes; I understand.

995 Mr. Matthews: You may examine him.

Cross Examination by Mr. Mooney:

Q. Mr. Hedges, you were appointed by Judge Mayer, were you? A. Yes, sir.

Q. And was your appointment made permanent? A. Yes, sir.

Q. And so that we may have a statement on this record of what the New York City Railways, of which you are the Receiver, the New York Railways Company, of which you are the Receiver, is, visually or in fact, will you please tell us what that
996 is? A. Is or was?

Q. Well, either way? A. It was all the green cars operated on Manhattan Island. It is a few that are left.

Q. That is, it has been disintegrated, has it? A. Yes, sir.

Q. And the green cars served the East Side largely, didn't they? A. They did; yes, sir.

Q. And because of the people that it served and because of the district through which it went, the discontinuance of the cars brought out a good deal

of turmoil and bitter complaint, didn't it? A. Yes, sir. 997

Mr. Matthews: I move to strike that out.

Mr. Mooney: That is in the writing. You might as well bring it out by him as by a dozen other people.

The Court: I think it is irrelevant, but it has been answered and I will let it stand.

Q. If all had gone well, as you hoped it might when you became Receiver, it was your hope and desire to continue to operate the green cars and the other properties within your charge as a part of a unified system, wasn't it? A. Yes, sir. 998

Mr. Matthews: The same objection.

The Court: The same ruling.

Q. Now, with respect to the subject matters upon which you were examined, namely, your directions to furnish information, and so forth, I will ask you whether that came from your simple duty as Receiver, from experience that you had had, or from a prompting, an unusual prompting of your head or heart? A. You mean the sending of the report? 999

Q. No, not the sending of the report. The report is printed. A. I don't get your idea, Mr. Mooney.

Q. Well, let me put it to you very simply. You said, "I directed that information be given." Now, did that come from the simple performance of the duty of a Receiver, did it come from experience that you had had, or did it come from the prompting of your own head or heart? A. All of them and something else.

1000 Q. Well, what was the "something else?" A. The court.

Q. Well, you mean you heard and read what the court had said? A. Oh, yes.

Q. Now, of course, you've been practicing for a good many years, haven't you? A. Yes, sir.

Q. And did you know that another court, sitting where his Honor did when you heard him say these things, had directed the same thing and that his purposes had failed utterly? A. I don't remember that.

1001 Q. Did you believe that any formal direction, if this was a formal direction, would be carried out in spirit by such men as were interested or had been interested in running green cars? A. You mean the people subordinate to me?

Q. Yes. A. I did.

Q. You continued in your employ the same men who were there, didn't you? A. Many of them.

Q. And was Morehead a member? A. You mean the Dr. Morehead?

Q. Well, I don't know whether he is a doctor; he might be anything by this time. I mean the in-

1002 famous Morehead? A. I don't know any such person.

Q. Don't you know any man who sold the books of the railway companies for junk? A. I don't know him.

Q. Was Sayer in your employ? A. I gave my directions to the heads of the departments.

Q. And who was the head of the department? A. I gave my directions to Mr. Hedley, to Mr. Samison, the accountant, to Mr. Quackenbush, and the treasurer, and all the heads of the departments.

Q. Well, did you know that Mr. Quackenbush

had taken the position in the Thompson investigation that he would not allow any roaming through his books? A. That had nothing to do with it. I had heard that such— 1003

Q. You thought he would be a new man under Mr. Hedges, did you? A. I thought he would do as I told him to.

Q. With the reservation— A. (Interposing) With no reservation.

Q. You are speaking with great frankness, as I know you want to, but did you really cherish the thought and the hope and the expectation that Mr. Quackenbush was under your direction going to alter the thought and the habit of mind which he expressed, as you know something of, before the Thompson Investigating Committee? A. Yes. 1004

Q. Well, you are a marvelous man, Mr. Hedges. We always regarded you as such and I regard you now as such more than ever. You are a man above men. Well, then, you did really feel that your administration of this road was going to produce a different result than you knew of from your knowledge of public affairs in connection with street railways? A. I hoped it would.

Q. You hoped it would, but in the endeavor to carry that out you did intend that there should be an access of the kind and quality which his Honor had noted in his memorandums and in his public utterances? A. Absolutely. 1005

Q. So that I may shorten your examination in that respect, you had no other instructions than such as we can read in the record, had you? A. No. You mean that I had never had any communication with anybody on that subject than the Court, outside of that direction?

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Q. Well, you've enlarged my question; I was rather keeping— A. (Interposing) I only asked you so as to be sure to answer anything you want.

Q. Let me frame my question again because the suggestion communicated might lead us astray. Had you any intructions or did you give any instructions other than as were in line with the recorded utterances of his Honor? A. None.

Q. So that you were carrying out a duty, is that it? A. Yes.

1007 Q. Now, in carrying out that duty, or in the course of the execution of your duty, you encountered a feeling or disposition on the part of some of these officials whom your instruction would have served, that made you feel that no good could be served by any hope or expectation of co-operation, didn't you? A. You speak now of the officials under me or the city officials?

Q. The city officials? A. I don't know as to that. My thought was to present all I could and make an application for relief, and get it if I could.

1008 Q. Well, there came a time during your administration, prior to October 6th, where you felt that you were being hindered, and you felt that your efforts were being frustrated by the officers of the Municipal Government, didn't there? A. Well, speaking generally, I don't know that that is so. I did not feel much encouragement from the public utterances of the Mayor.

Q. But you went very much further. You are not the kind of a man who would make an attack upon the whole government because of the public utterances of the Mayor are you? A. Oh, no.

Q. While you might be somewhat distressed in some direction, when it came to making charges you would be more or less specific, wouldn't you?

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A. Very apt to. I handn't seen any encouragement that would lead to any mental ecstasy about it.

Q. Do you recognize this as having been said by you September 11, 1919 (reading): "And now as between the trust imposed on me by the court and the general public, which is the sufferer, because there has been no assistance given to the Receiver by the local authorities, the responsibility can rest where it belongs." Do you remember saying that in substance? A. Sounds very familiar.

Q. Now, didn't you realize that from that attitude on your part that your subordinates would take a slant or line in accordance therewith? A. On the contrary. 1010

Q. Did you think they would treat your observations chaotically? A. I thought and assumed they would treat my observations—I assumed they would take that as it was. They would read that in the papers and take my directions from me, and I assumed that they knew, as I had told them, that we should continue to do all we could, no matter what was said or done by anybody else to justify relief.

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Q. Do you remember speaking of hypocrisy in the same connection? A. I rather assume I did; I don't recall the particular instance.

Q. Now, Mr. Hedges, perhaps I had better give you the phease. It is an epigram and if I don't give you enough of it, why, ask me for more. You ended up a sentence with the words "where hypocrisy does not take the place of intelligence." Now, that, of course, was directed against the local government, wasn't it? A. Why, it must have had some reference to them; yes, sir.

1012 Q. And, of course, if this record was not entirely for local consumption people might not quite understand, but the real truth of the matter is that it was intended to indicate that the Board of Estimate of the City of New York, having the power to deal with the question of fares, were dealing hypocritically with it and not intelligently—isn't that a free translation of your epigram? A. Why, quite so.

Q. Well, now, did you believe—of course, it isn't with a man like you, to drop into the vernacular
1013 —but did you believe that when the master, when the Receiver was delivering himself of such statements as that, that his man, such as Mr. Hedley had come to be—of course, you know Mr. Hedley, don't you? A. Oh, yes; I met him several times.

Q. Did you believe that such a man as Mr. Hedley and others that you have named would accord to the Board of Estimate and Apportionment the information which you had directed them to give? A. Absolutely.

Q. You did believe it? Well, it certainly would have been a great pull along the lines of duty as
1014 against the inclination of the boss, wouldn't it, meaning there by "the boss" the head man, yourself? A. I don't know as to that.

Q. Did you think, when you made that expression, that you were expressing your own feelings or those of the Court's as you understood them? A. Without any question, I was expressing my opinions.

Q. Well, of course you did know that at or about that time the Court, without attempting to quote him literally and without attempting to inject into the record but what will be there hereafter, in form or shape, you do know that the

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Court himself made some animadversions upon the conduct of the local government with respect to the railway situation? A. Yes.

Mr. Matthews: I object to that.

The Court: Sustained.

Mr. Mooney: I except.

Mr. Matthews: I move to strike out the answer.

The Court: Strike it out.

Mr. Mooney: I except.

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Q. Now, did you, prior to the 6th day of October, do anything with reference to furnishing access to original sources in your possession? A. Oh, yes.

Q. Did you do anything more than the direction that you have testified to, or to give the direction to which you testified? A. Why, I was in frequent consultation with all the heads of departments from the time I went there, and I told all of them that the only possibility of any change of attitude or relief was an entirely open matter toward the public officials and had to be done.

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Q. Well, you did realize, did you not, that the City of New York was interested in several aspects, without entering into all of its relations, you knew that they were interested in the question of the books and accounts, the franchises and the figures and all, because of their varied relations to the taxpayers and to the government, didn't you? A. I assume so.

Q. You've been receiver before, haven't you? A. Once or twice.

Q. Do you know of any effective means of obtaining information with respect to properties that

1018 are in the hands of a receiver other than by individual acts as to original sources by the person seeking the information? A. Why, that is the best method.

Q. You were present at the conference that was called by Mr. Nixon, the Public Service Commissioner, weren't you? A. Yes.

Q. And you heard the letter read which is the subject of these proceedings? A. Yes.

Q. And do you remember saying on that occasion, "All this is in good spirit because I know every-
1019 thing said here this morning will be in the papers this afternoon; every word of it will be said in the papers to-morrow morning." Do you remember that? A. Yes, in substance; yes.

Q. And you made that apparently from some experience that perhaps everybody does not possess, because that was after the reporters had been excluded; do you recall that? A. Yes.

Q. So that your experience in public affairs, in affairs of this community, were that, notwithstanding the exclusion of the reporters, that it would all get in the papers? A. Yes. There were twenty-
1020 five or thirty men in the room, as I recall it.

Q. Do you personally believe, Mr. Hedges, speaking as a witness and laying aside your official character, that any man or a set of men could agree upon a change in the terms of a franchise, basing their information only upon an expert accountant's report like that of Stone & Webster—when I said "franchise" I meant public franchise, street franchise? A. Yes, I think they could if they would read it and study it.

Q. Do you know, or do you believe, or do you think that this matter of Stone & Webster allocat-

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ed the stealings which we all know from public investigations within the last quarter of a century, the admitted stealings; do you know whether Stone & Webster put them on one side of the account or another?

Mr. Matthews: I object to that.

The Court: Sustained as immaterial to this inquiry.

Mr. Mooney: Well, your Honor, they put in Stone & Webster's report. I would not like to pass that by without calling attention 1022
to it. I must be allowed some leeway with that and I would like to make this suggestion. I do not wish to be dispersive, but I would like to make this suggestion to you becausce it is worth consideration, I think. These proceedings are summary proceedings. They are, according to all the authorities, to be conducted otherwise than in strict conformity to any practice or procedure that is laid down, or, as Chief Justice White said,

"While they are in a certain sense above the law they always move within the law." 1023
Now, they are expressly described as summary proceedings and in the nature of affairs they are not to be circumscribed by those rules of evidence which are applicable in an ordinary litigation between parties. Do I seem to be branching out?

The Court: Well, I thought so.

Mr. Mooney: Well, then, I will stop. The time will come, your Honor—

The Court: I consider the question inadmissible for two reasons: first, that in this

1024 inquiry the merits or lack of merits in the Stone & Webster reports are entirely immaterial and, secondly, the opinion of the witness in respect thereof is entirely immaterial.

Mr. Mooney: Well, without elaborating, your Honor, this is not attacking the Stone & Webster report. Let everybody in this courtroom get out of their heads that I am making a charge, or intend so to do, or that I am going to elaborate or going to branch out. Every question is intended to be put,
1025 however ineffective I may be doing so, from the standpoint of such learning and intelligence as I possess as a member of the court; but I think it would be plain to anyone that when the witness is called to testify with respect to directions which he gave out, and then is put in evidence an account of these experts, the question recurs not upon the accuracy or sufficiency of the Stone & Webster report but as to whether, in the knowledge and belief of the witness he was giving out—because that is what he is called for—he was
1026 giving out this information, it were possible for the public to ultimately get that information it was necessary for them to have to make up their minds on the point that anyone was interested in having to make up their mind, namely, upon their official duties with respect to a rehabilitation or reconstruction. Now, this inquiry cannot, I submit, be kept within any such narrow limits as that. A witness has his say upon a certain point and there the inquiry stops.

It seems to me that it is of the utmost consideration—it will be, I hope and I think,

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before you get through—to know whether Stone & Webster put, we will say, the $900,000 item in Construction Account or whether they put it in some other account, not because you are here to try out that question but because a public official of the City of New York could not understand this account until he knew, if he could ever find the scraps from which to construct his knowledge, whether the $900,000 item, which has been the subject of this investigation, and therefore is within your knowledge and ju- 1028
dicial experience as a judge, whether that was on one side of the account or the other. Now, it seems to me that it is material for me here to show—and if these doors are to be closed, after I have made as intelligent an explanation of it as I can—if these doors are to be closed, it should be with the knowledge on your Honor's part of what I am attempting to show by the witness. I am not trying to attack tiny, little bits of paper or tiny little things such as expert reports are, because, after all, we know them to be a 1029
mere aggregation of figures; I am trying to reach the very point of the letter which is claimed to be contemptuous here, as to whether a public officer could or could not get any intelligent appreciation of the figures except from access to original sources. Now, this case seems to revolve very largely about that point. Your Honor seems to be of the impression, so far as your judicial utterances disclose, you seem to be of the impression that original sources are such as an

1030 expert can hand out. Our insistence is, as firmly and as strongly as we can make it, that original sources mean the ability for a man to go in and search and find and discover, and there never has been an investigating committee yet appointed and a public officer yet appointed who has been able to get into the original sources of these street railway companies; and if anybody has any idea that on a judicial order or the say so of a receiver, however weighted it might be, the
1031 people were to be afforded information, that that was equivalent to access to original sources, it will fall far short of human experience in this town.

Now, I say in my examination of Mr. Hedges I am entitled to know what he believes; a question of his perception; it is a question of whether he believes, when this Stone & Webster report went to these people, as to whether such great items as I have spoken of, that are in your Honor's mind and all of us, whether they have been on one side or
1032 the other. He says that he not only gave these instructions but he believed they were going to carry them out; and my object is to show that no one, except from that fondness of duty which a receiver gets in the performance of his duty, that no one could indulge the fond belief that the City of New York was to get access to this item of $900,000 and find out whether it was put into Construction Account or—

The Court: All that you have said in my opinion is quite beside the case, utterly im-

material. The letter sets forth, among other things, that there must be a reversal of the policy, for which Judge Mayer is responsible, of "denying to myself and other members of the Board of Estimate and Apportionment any access to original sources or information concerning the property and affairs of these various public utility corporations holding franchises to operate in the streets of New York." Now it is the Court's understanding that the report of experts is nothing more or less than the report of experts. 1033 1034

Mr. Mooney: Well, that is just the point.

The Court: The letter refers to a denial of access to sources of original information.

Mr. Mooney: Well, that is what the witness testified to. The witness testified that he gave the writer authority to have access to original sources of information.

The Court: The testimony was strictly confined, on direct, as it touched this subject matter to that point. Now, it is perfectly manifest that the question asked of the witness is inadmissible for the two reasons at least to which I have referred, and I adhere to my ruling. 1035

Mr. Caffey: Will your Honor hear me for a moment? Counsel for the defendant has indicated what the attitude of the defendant is toward the relevancy of evidence of the case which is here being tried. We are not in the slightest concerned whether traction companies are good or bad; we are not in the slightest concerned in the history of

1036 traction companies or with any prior controversy. We are here to try merely whether the defendant is guilty of contempt of court. The information specifies definitely five respects in which this letter is alleged to be untruthful and to be contemptuous. Whatever may be the other statements in the letter is of no concern to us, because there is no charge here except in the five respects specified.

Now, these five respects are, one, the de-
1037 nial of access to original sources of information to the defendant and members of the Board of Estimate; that is one. Now, anything that has a bearing, one way or the other, upon whether or not there has been a denial of that access by policy for which the Court is responsible, is relevant, and anything else having to do with whether or not the city had access to original sources of information, or any other kind of information as to the traction companies, is wholly irrelevant. Reference has been made
1038 by Mr. Mooney to the Thompson investigation. We are not the slightest concerned with anything that occurred in the Thompson investigation. This letter charged that this court was responsible for a policy of denial to the city officials, the defendant and other members of the Board of Estimate and Apportionment, of access to original sources of information.

Now, the relevancy of this Exhibit 26 for identification is this and this only—that in the memorandum of the Court the Court's officials were directed not merely to furnish

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a copy of this report to the city officials but were also directed to make it clear to the city officials that every facility will be afforded for the public officials and to citizens' associations to satisfy themselves in respect to the actual financial and other conditions existing with relation to the corporations now in their official charge, and the letter signed by the receivers accompanying this report, when it was sent to the defendant and other members of the Board of Estimate and Apportionment, contained this 1040
statement, and this is the part of the letter which is relevant: "At the same time we desire to state that every facility will be afforded to you to satisfy yourself in respect of the actual financial and other conditions existing in relation to the corporations now in their official charge. Manifestly, anything having bearing upon this statement in this letter, that the Court had adopted the policy of denying to city officials access to sources of information, is pertinent evidence.

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The Court: I understand that perfectly. I have not referred to the letter because thus far it is merely marked for identification. Naturally, I am familiar with the Court's memorandum and directions of the receivers and trustee, as well as with the letter of the receivers and the trustee, written in pursuance of the Court's direction.

Mr. Caffey: I will not go into the details of the other four specifications at the moment, but with respect to them, just as in respect to the first point that I have dis

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cussed, as to which the letter is alleged to be untruthful and to be contemptuous, evidence is competent, evidence is relevant, but in no other respects. Now, that is the Government's position.

Q. Did you know, in answering this letter, which has been marked for identification, the number is 26, or authorizing its sending, that in part, at least, the expert's report had to be made up from sources where one of the sets of books had been destroyed.

1043 Did you know that?

Mr. Matthews: I object to the question. It is wholly immaterial and does not come within the previous rulings.

The Court: Sustained.

Mr. Mooney: I except.

Q. Did you know that when you were sending a copy of this memorandum of Judge Mayer, and sending your letter, Exhibit 26 for identification, that in fact an entire set of books of one of the railway companies to which your letter referred,

1044 which had been referred to as the books of the corporation in one public investigation, that those had been sold to a junk dealer, and that after they had been sold to a junk dealer another official of the company had appeared before the Grand Jury of the County of New York and said that he had an unofficial set of books of the same company and had testified with respect thereto? Did you know those facts when you sent your letter and the memorandum of Judge Mayer?

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Mr. Matthews: I object as irrelevant and immaterial.

The Court: I assume these questions are to matters prior to the appointment of the Receiver?

Mr. Mooney: Yes, sir.

The Court: Objection sustained.

Mr. Mooney: I except to that.

Q. Did you know, Mr. Hedges, that there were not in your possession books, original books, and original sources from which Stone & Webster could make up their report? 1046

Same objection; same ruling; exception.

Q. Did you know that the Stone & Webster report was in large part made up from other than original sources?

Same objection; same ruling; exception.

Q. Did you know of original sources from which the Stone & Webster report was made up, so far as any books in your possession went? 1047

Mr. Matthews: Just a moment. I don't understand the question. May I have it restated?

Mr. Mooney: I am stating these questions so as not to appear to be assenting to the Court's ruling. Has your Honor got clearly in mind—do you think I have asked enough questions to develop the point?

The Court: I think so.

1048 Mr. Mooney: I am trying to be respectful, as I always want to be, but I don't want to put the questions crudely and fail to develop my point. The witness should have known or did not know anything about it that the Stone & Webster report was, in the very nature of things, largely made up upon an assumption, because the original records and original sources had been very largely destroyed. Your Honor does not feel that that is of any importance?

1049 The Court: Quite right.

Mr. Mooney: And I except.

Mr. Matthews: The point that Mr. Mooney has in mind is that back in history, before the appointment of the Receiver, certain things happened to certain records, and he is referring to records that never came into possession of the Receiver, and not to the records that were in the possession of the Court or the Receiver.

Mr. Mooney: My point is that any expert's report of the railways of the City of
1050 New York must, in the very nature of things, in the knowledge of every man in this matter, it must be a fictitious report, with all due respect to Stone & Webster, because the evidence does not exist except so far as it can be reconstructed from loose memorandums, because most of the books were sold as junk and the other set of books is admittedly a bogus set; and therefore any report of Stone & Webster or anybody else to a man familiar with the railway situation in the City of New York, is not worth the paper it is written on. I say that with due

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respect to everybody here, but I feel that we should not be a lot of boys. You cannot make up a set of books of the City of New York because they are admittedly bogus.

The Court: The Court understands that all the references to acts alleged to have taken place prior to the receivership are wholly immaterial and incompetent.

Mr. Mooney: And we except to that.

The Court: Anything more, Mr. Mooney?

Mr. Mooney: There isn't anything left after that ruling.

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HENRY L. STIMSON, a witness called on behalf of the Government, after being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Colonel Stimson, from the appointment of the Receiver in the New York Railways Company case down to October 6, 1919, were you at any time counsel to the Receiver? A. I was counsel from the time that he was confirmed; I think that was about April first, if I am not mistaken.

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The Court: March thirty-first.

The Witness: March thirty-first.

Q. By "confirmed" you mean his appointment was made permanent? A. His appointment made permanent; yes.

Q. And you served from that time down to and including October sixth? A. Continuously.

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Q. During the time you were counsel to the Receiver, did you at any time, as the Receiver's counsel or otherwise, deny to the defendant any access to original sources of information in your possession, as counsel to the Receiver?

Mr. Mooney: I object to that as incompetent, your Honor.

The Court: Overruled.

Mr. Mooney: Exception.

1055

A. I did not.

Q. Did you deny such information to any member of the Board of Estimate and Apportionment? A. I did not.

Q. Now, I have asked you with respect to original sources of information. Have you denied access to the defendant to any sources of information in your possession?

Same objection; same ruling.

A. By "denial" you mean, of course, on request from them?

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Q. Yes? A. I did not.

Q. That question was as to the defendant himself. I ask you the same question with respect to other members of the Board of Estimate and Apportionment. Did you deny to any one of them any access to any information? A. I did not.

Q. Have you appeared in court in connection with the proceedings from time to time in connection with the New York Railways Company? A. I have.

Q. Have you been present in court in connection with these proceedings when the Corporation

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Counsel's office was also represented in court? A. I have.

Q. Have you observed the Corporation Counsel, personally or through his assistants, take part in the proceedings called by the court, make arguments and file papers in connection with those proceedings?

Mr. Mooney: I object to that as incompetent, and so as to elaborate the point, it is particularly incompetent because the Corporation Counsel of the City of New York is neither the representative of nor the official or other means of communication with the Comptroller of the City of New York, the defendant, and neither in law or in fact would any communication thus made to the Corporation Counsel pass to or bind or become known to the defendant. 1058

The Court: I will sustain the objection at this time.

Q. Do you recall, Colonel Stimson, along early in the receivership the appointment by the court of experts and accountants to make certain investigations and reports on the New York Railways Company's financial situation? A. You mean Messrs. Stone & Webster? 1059

Q. Yes? A. I do.

Q. And I believe there is also a firm of accountants? A. Price, Waterhouse & Company?

Q. Yes? A. Yes, I remember.

Q. Do you recall preparing instructions for the accountants and the experts, and the accountants making up this report? A. I do.

1060 Q. Will you state whether or not a draft of those instructions to be given by the Receiver was furnished by you to the Corporation Counsel before they were finally given?

Mr. Mooney: I object to that, your Honor.

The Court: I will take that only for the purpose of identifying the papers and marking them.

Mr. Mooney: Well, now, so that this
1061 should not proceed along these lines with any seeming acquiescence on my part, and to keep the matter within its proper channel, I wish to point out that the course which the learned District Attorney is pursuing is to build up and to buttress his Stone & Webster report, and that your Honor is ruling, if I understand your rulings right, that I cannot break down the Stone-Webster report. One man may build up and I am not allowed to break down.

The Court: Well, I will allow that par-
1062 ticular question for the reason indicated.

Mr. Matthews: I don't want, if it is possible for me to avoid it, to have the question allowed in a limited way, and I will call the court's attention in a way that it will be later made to appear in this proceeding, that the Corporation Counsel, in connection with at least one of these receiverships, appeared at the express direction of the Board of Estimate and Apportionment, and conducted a proceeding or made an application to the court, and he is the legal representative of

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the city. He is the person or the lawyer upon whom the Board of Estimate and Apportionment must rely in connection with legal proceedings, and for that purpose the Corporation Counsel is the City of New York; is the Comptroller of the City of New York; is the Board of Estimate and Apportionment, in all proceedings in court.

The Court: The point is there is no evidence yet to the matters to which you refer.

Mr. Mooney: And, besides that, if there were it would disestablish the point instead 1064
of buttressing it, because in that particular instance it appears that for the purpose of making the application, which was denied and which has resulted in all this succession of events, the Corporation Counsel was acting as he only could act under an express direction of the Board of Estimate and Apportionment, and there is attached to the record, of which my learned friend has given me a bill of particulars, the resolution of the Board of Estimate and Apportionment employing him for that purpose, 1065
so that the point is excluded by the objection. Now there ought to be no doubt of what Mr. Matthews is referring to here, because others that read this record may not understand it as well as we do, that the paper to which he refers is the application made by the Board of Estimate and Apportionment through the Corporation Counsel, that Mr. Craig be appointed the co-receiver to serve without compensation. Now, that is the paper to which he refers, and that was

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upon an express resolution, as it appears by the paper itself.

The Court: I think I understand the matter. I have already ruled.

Q. Will you state, Colonel Stimson, what correspondence you had with the Corporation Counsel concerning the work of the experts and accountants; have you your file with you?

Mr. Mooney: Same objection.

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The Court: I merely take it for identification.

A. You are speaking now of written correspondence?

Q. Written communications? A. Written communications; yes. I have a copy—I think the originals have been sent to you.

Q. No, I have the copies. I think you have the originals. A. No, I have not the originals.

Mr. Matthews: It appears, if the court please, that in view of my failure to make

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it plain, that the originals of the correspondence that I desired to have identified are not here. I have copies which the witness furnished. May we proceed to have these copies identified and the originals later produced, in order that it will not be necessary to have Colonel Stimson come back again?

The Court: Yes.

Q. Colonel Stimson, did you have a conference with the Corporation Counsel concerning the report of the accountants and experts?

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Mr. Mooney: I object to that, your Honor, as incompetent.

The Court: I will allow the answer; just yes or no.

Mr. Mooney: I except to that. This is one of those instances in which the answer yes or no carries with it an element of proof, do you see? Ordinarily the answer yes or no would not carry with it an element of proof, but here it does; that is the reason I object to that as incompetent.

The Court: I think there is force in that. 1070
I will sustain the objection.

Q. Did you have a conference with the Corporation Counsel concerning the relations of the receivership, the Receiver and the attorneys for the Receiver, with the City of New York and its officials?

Mr. Mooney: Same objection.

The Court: Same ruling. I will sustain the objection.

Q. Did you have certain correspondence with 1071
the Corporation Counsel?

Mr. Mooney: Same objection.

The Court: I will allow that.

A. You mean in regard to the subject that you've just spoken of? I have had much correspondence with them on many subjects.

Q. I am now speaking with respect to the reports of the experts and accountants.

1072 Mr. Mooney: I object to that.

The Court: I will allow it solely for the purposes of identification, and with leave to move to strike out the answer.

A. I have.

Q. Have you copies of the correspondence? A. I have in my hands here some papers which speaking from recollection and without having personally compared them with the files, I believe to be true copies of that correspondence.

1073 Q. Will you state what this correspondence consists of? A. It consists of a letter from my firm—

Mr. Mooney: I think, since the witness is answering and from what he said, I think we should have the papers at this time marked for identification.

The Court: Suppose we have the papers marked for identification and then check up with the originals.

Mr. Mooney: I would not take that position were it not for the fact that there are two lines of objections.

1074 The Court: These can be marked for identification subject to verification with the originals, if that becomes necessary.

Mr. Matthews: Shall we mark the whole set of correspondence one exhibit?

The Court: Yes; I think so.

Mr. Matthews: I think that will be the better for convenience.

File of papers marked Government's Exhibit 27 for Identification.

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Q. Were the letters purporting to have come from your office, that is, from Winthrop & Stimson, letters that were prepared by you? A. They were.

Q. And were the letters purporting to have come from the Corporation Counsel, or from Stone & Webster, or Price, Waterhouse & Company, letters received by you in the regular course of business?

Mr. Mooney: I object to that, your Honor, for the ominous feature of it, if for no other; counsel is unable to follow such a qustion or conduct themselves—

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The Court: I will allow the question up to "received." Strike out "in the ordinary course of business."

A. They were.

Q. And did the letters going out from your office, signed "Winthrop & Stimson," go out at your direction? A. They did.

Q. I notice one letter there to the Receiver. I assume that your answers apply to that as well as to other letters? A. A letter to the Receiver?

Q. Yes? A. Yes. The same answer applies to that. There are in this set of papers letters which 1077 were sent by my firm to Stone & Webster and letters which they received from Stone & Webster, referred to in the letter which I wrote to the Corporation Counsel. What I mean is, the file which you have shown me includes more than correspondence directly with the Corporation Counsel.

Q. Yes, that I understand. In your letter to the Corporation Counsel you enclose a draft of a letter which had been prepared to Stone & Webster and Price, Waterhouse & Company? A. Yes, and more.

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Q. And in addition to that there are letters from Price, Waterhouse & Company and Stone & Webster to you and letters from you to them? A. Yes, there are.

Q. Did the Corporation Counsel make suggestions as to the information to be called for from the experts and accountants?

Mr. Mooney: Object to that, your Honor.

The Court: Sustained.

Mr. Matthews: Well, of course, it appears

1079 from the correspondence, if the correspondence goes in evidence.

Mr. Mooney: Now, please don't even get that much on the record.

The Court: That is the way it has been suggested. Suppose it applies now to both sides, that matters not stated in answers sound like facts but which are not proven.

Mr. Mooney: I will certainly follow the court's instruction, but I am unaware of having stated any fact.

Mr. Matthews: I will endeavor to follow

1080 the Court's suggestion. I think that is all.

Cross Examination by Mr. Mooney:

Q. Colonel Stimson, you are the man who is responsible, so far as any individual could be responsible, for the institution of these proceedings, aren't you? A. You do me too much honor. I don't think I am.

Q. Well, I don't intend to do you any honor, but you are the man who set the thing afoot, aren't you?

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Mr. Matthews: I object to that. It makes no difference whether he was or not.

The Court: Sustained.

Mr. Mooney: Well, I will ask him by reference to the record, but I don't know that we get anywhere by it.

Mr. Matthews: I understood the court has sustained my objection.

Q. You went to a conference, didn't you, in which Mr. Nixon and others were present, with the view to a discussion of the transit situation? A. I did.

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Q. And while you were at that conference you heard the letter, which forms the subject matter of these proceedings, read, didn't you? A. I did.

Q. And when you had heard that letter read you said, did you not, that this letter should be immediately submitted to Judge Mayer?

Mr. Matthews: I object to that.

The Court: Overruled. I will allow it.

A. I certainly did.

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Mr. Matthews: In the first place, it is all in the record. Mr. Mooney put it in himself. I don't see any necessity of putting it in over again.

Mr. Mooney: I never saw a man who was so afraid to have his witnesses cross examined as you are.

The Witness: I hope the court and the District Attorney will allow the fullest cross examination.

Mr. Mooney: So do I.

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The Witness: In the light of what has been said here previously.

Q. Yes; you realize that my cross examination is directing itself to a matter of public comment and public report, don't you, in which you have been called an errand boy; you know that, don't you?

The Court: That is excluded as immaterial.

Mr. Mooney: Well, I don't know otherwise what the witness' observation meant.

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Mr. Matthews: I move to strike out the observation of the witness. It is not responsive to any question by either counsel.

Q. I thought I was helping the witness out this time. Mr. Stimson, will you kindly tell us what you meant by the observation that you volunteered?

Mr. Matthews: I object.

The Court: Sustained. I will let the observation stand and I will sustain the objection.

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Q. And when you—I don't suppose anyone wants me to read this all to you—when you said— A. (Interposing) I can state the substance if you desire it.

Q. Well, if you wouldn't mind letting me have a little bit of leeway we might make some progress. My learned friend always stands here to help me, and you help me and the judge doesn't. But you said in the course of your remarks, "I think that a copy of that letter should be sent at once to Judge Mayer." You accompanied that with a very

severe assault on the writer of the letter, didn't you? A. I accompanied it by a statement that the letter in many respects was false, to my knowledge. 1087

Q. That is a pretty serious thing with respect to one lawyer to another; it was a very serious thing and you were a chagrined and hurt man, weren't you? A. Not in the slightest.

Q. Weren't you very much interested in the success of this conference? A. I thought that the conference was an important conference, and I regretted that the representatives of the city had not been able to come. In no other respect that I know of was I chagrined. 1088

Q. But you knew the writing of this letter was the death-knell to the conference, didn't you? A. Well, it indicated that one member of the city's representatives was not coming.

Q. It meant a great deal more than that, didn't it, to you, Mr. Stimson? A. It meant nothing more to me than the failure of a conference which I thought was desirable to the interests of the city and the public and to the Receiver.

Q. But you were a hurt man when you made that observation? A. Not the slightest. 1089

Q. You don't consider that a hurt? A. Mr. Mooney, what you are saying here indicates that I personally was hurt. I had no personal interest in it whatever. I was there representing the Receiver; I was endeavoring to assist forward a conference which I thought was important, to assist a solution of a problem, but in no personal sense was I hurt in any degree whatever.

Q. Well, then, you were a thwarted man—I don't care about these adjectives very much. I want to get at the animus. You represented an

1090 interest you were being paid for, weren't you? A. I represented the Receiver, and was being paid as counsel for the Receiver, but my pay would go on, Mr. Mooney, whether we succeeded in that conference or not.

Q. Well, I don't know much about this railway business, but I know that the first duty of a lawyer is to the man that is paying him. You had a duty that you were representing there? A. I thought I had.

1091 Q. And therefore anything that hurt your client hurt you, didn't it? A. Why, in no personal sense. I would be very glad, if I understand your question—I was disappointed; I was disappointed that the conference was not successful.

Q. Well, then, when you started on your way to Judge Mayer's chambers you started as a disappointed man, didn't you? A. In that limited sense; yes, sir.

Q. Since when did you constitute yourself the guardian of the dignity of the court?

Mr. Matthews: I object.

1092 The Court: Sustained.

Q. Had you ever done a similar thing?

Objection sustained.

Q. You said at this conference that the letter had been taken down by the stenographer, didn't you? You knew it and you said it? A. I saw a stenographer sitting within two or three feet of me; yes, sir.

Q. And you made observation of that; "It has been read in a meeting here, in the meeting in

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which there is a stenographer and presumably has been taken down by him." That is your statement, isn't it? A. Why, yes, Mr. Mooney; I was very much shocked that a letter of that sort should be read in public and should be made public in reference to one of the courts of this city.

Q. But didn't you think the Court would get the shock quick enough without your help? A. Mr. Mooney, I was an officer of the court.

Q. I know, but are you general guardian of the bar? A. Not at all, sir.

Q. Are you general guardian of the court? A. 1094
I am one of its officers.

Q. Well, didn't you think that this would get to the court quick enough when you saw it taken down by the stenographer? A. I was not at all, I am not at all aware now that I was doing anything except to bring the Court's notice, to endeavor to bring the Court's notice, a matter which, as an officer of the court, I felt the Court should have before it in order that it could act advisedly.

Q. Well, did you think I am endeavoring to pay you a great compliment, or did you think that you could occupy that extremely high attitude where 1095
you could distinguish between the thwarted feelings of your client and between that high sense which you have expressed with reference to serving the Court as your sole purpose; did you think you could draw that line? A. Mr. Mooney, it didn't require a very sharp line to be drawn in reference to that letter. It made an impression which was at once reflected not only in my mind, but in the minds of other speakers.

Q. Well, but they were all railway men, weren't they? A. No, sir. The other speaker whom I have

1096 in mind who spoke to me was an officer of the court representing a receiver.

Q. But he was also a railway man—I mean, no man rises higher than his employer, does he? A. He wasn't a railway man any more than I was a railway man.

Q. Well, you were a railway man; you were in the railway pay, weren't you, in the hands of the Receiver? I don't understand these refinements. Wasn't he representing a railway interest and weren't you representing a railway interest? A.
1097 I am very glad you've asked that question. With the Court's permission I propose to answer it. I was not representing a private railway interest in any sense, according to my understanding of the situation. I was representing a fund in the hands of the Federal Court in which I, as an officer of the court, under the direction of the Court, was endeavoring to work out the conservation of that fund in the interests of not only the owners of that fund but of the people in the city and of the city itself who were interested in the administration of that property. I have at different times in
1098 my life represented private interests and have a very sharp distinction between my position in such capacity and my position when I have been counsel of the Receiver of the court.

Q. Is that the complete answer? A. I think so.

Q. Do you wish to appear upon this record as being a man of such detached or detachable interest that in the practice of your profession, that in pursuing what you say was your course there, that you could detach your mind from the fact that the physical properties of the railways and their conservation and their betterment, and the betterment

of those who were interested in them was your chief consideration; can you do that? A. I haven't found it, as I considered, at all a difficult task. 1099

Q. So that when you come into the rare atmosphere of being counsel for a receiver, you don't think that that brings you into any question of feeling for those who owned the property? A. Oh, I didn't say that, Mr. Mooney; I didn't come into an identity of interest with them.

Q. Well, we realize that there are many grades of interest. What I am getting at, Mr. Stimson, is this. Is it not one of the ethics of your profession and of mine that a man who has an interest, 1100 that in order to stir up a prosecution as against a fellow member of the bar he may be actuated by some other feeling or interest; in other words, that a man should desist from any action in which he has an interest which has a personal outcome? A. In the first place, Mr. Mooney, I didn't stir up, to use your language, this prosecution.

Q. You carried the letter? A. I tried to carry the letter. My own recollection is that I didn't. In that respect I differ my recollection from Mr. Nixon's to what he testified here, but I freely admit 1101 that I tried to get the letter and carry it.

Q. And you had been United States District Attorney for the Southern District of New York? A. I had, sir.

Q. So you knew the machinery, didn't you? A. You do me too much honor. I don't think I ever had a contempt case.

Q. Well, anyway, you knew how to go about it, didn't you? A. About what?

Q. About getting a prosecution for contempt? A. No, sir, I did not. I took this letter to the Court; rather, I discussed it with the Court. My

1102 recollection is that it was brought down by one of Mr. Nixon's messengers after I had gone down.

Q. Now, the point that I am making with you, Mr. Stimson, is this. In this controversy that had arisen you had not only expressed yourself with reference to the falsity of this letter but you had expressed yourself, had you not, with reference to the position of the local authorities, of whom Mr. Craig was one, before he wrote the letter; isn't that so? A. I don't recall that. What do you mean, sir? If you will call my attention to any—

1103 Q. The minutes of the hearing on September 11, 1919. Do you remember making some animated versions against the local authorities, of whom Mr. Craig was one? A. If that is the hearing which resulted or which was in reference to the discontinuance of the storage battery lines, I think I did at one time say that in my opinion the action which we were debating there had been due to the failure of the city to co-operate with the Receiver and the Court. If you call that criticism I think I doubtless did criticize some of the city authorities.

1104 Q. Of course, it was directed against the city authorities, meaning the Board of Estimate and Apportionment, of whom Mr. Craig was one, wasn't it? You knew that they were the power, didn't you? A. I knew that they represented the city in certain respects.

Q. What I want to get back to is, without offence to anybody, this position. We all realize that a contempt proceeding may be initiated and that it may be initiated by the Court, but as advocates we realize that advocacy is not dead and that a contempt proceeding may be inspired and it may be inspired by a person who has an interest to in-

spire it, a proper interest; and it may be inspired by a person who has been thwarted or whose client has been thwarted; or it may be inspired by a man who has already himself declared a feeling such as you have expressed, against the City Government, of which the defendant is one. Now, I ask you, under these circumstances, do you think it was right and proper and unbiased, because you are here as a witness, do you think that your position in the matter was right and proper in the matter, and unbiased? A. Why, Mr. Mooney, I can tell you that perhaps better by recalling, as I am trying to do, my feelings during that day. The conference which you have spoken of on October 6th took place, as I remember it, as a sequel to another conference, and on the suggestion of the Public Service Commissioner, Mr. Nixon, that if I who had been present at the former conference, together with the Receiver and several other of the Receivers, if we should try to get at this next conference all of the parties of every sort who were interested in the traction properties, either as receivers or as security holders, or in any way, why, he on his part would invite in Mr. Delaney, the other Transit Commissioner, and also the members of the Board of Estimate and Apportionment, in an attempt, as he expressed it, as I recall it, to get all parties around the table where they could discuss what we all regarded as a very difficult, intricate problem, and to discuss it without any bias or private opinion towards any given solution. In other words, Mr. Nixon at that time was trying to—

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Q. Excuse me, sir; I am not asking you about Mr. Nixon; I am asking you about a question of

1108 ethics. A. I am coming to that, sir; but it all bears on it.

Q. I am not going to allow you, if I can help it, to bring in a lot of extraneous evidence as to what Mr. Nixon was doing, because we say Mr. Nixon was doing nothing. Can you answer the question without bringing that in? I am asking you about Colonel Stimson? A. Colonel Stimson was there as a part of that conference in the frame of mind which I was trying to describe, as arising out of that effort instituted by Mr. Nixon.

1109 Q. Well, will you give us your mental processes and not evidence? A. I will try to. Having met in conference for that purpose we were all endeavoring to reach, so far as we could, without any other public authorities than Mr. Delaney, who was the only one that I recall that had responded to the invitation, we were trying to reach an advance or progress in the direction of the solution of this problem. I remember that a long proposition was read first of all in the meeting by the Public Service Commissioner, and he invited inquiries about it. None of us had ever heard of it

1110 before and we discussed it, so far as we could, and we asked him whether he could not give it to us in writing, with an opportunity to discuss it further. We were in the frame of mind of endeavoring to work out without bias—

Mr. Mooney: Excuse me, Mr. Stimson.

Mr. Matthews: I submit he is asked for his frame of mind.

The Court: I think the whole thing is utterly irrelevant. I have sat still because no objection has been made; it hasn't anything whatever to do with the case, but if counsel insists upon having a witness' frame of mind I shall not in any ordinary sense restrict the witness in his statement.

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The Witness: Having started I should like to finish.

Mr. Mooney: I think the examination of the witness may be conducted according to ordinary lines.

The Court: You asked him what was his frame of mind. He may finish it now.

Mr. Mooney: I submit he is not entitled, in giving his frame of mind, to state matters of fact.

The Court: Well, I have ruled. You may have an exception.

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Mr. Mooney: Exception.

The Witness: As bearing upon my frame of mind, I was there by the express direction of this Court.

Q. Had the Court suggested the conference? A. The Court had not suggested the conference but, according to my recollection, when Mr. Nixon had suggested it we had conferred with the Court and asked him whether we should attend it and carry out some important suggestions.

Q. But you knew then you were going into a conference where there might be varying and very decided views expressed on either side, didn't you? A. I knew there was sure to be a difference of opinion on the merits of the case. I didn't have any idea that there would be personal onslaughts made by either side on the other.

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Q. Didn't you rather regard your position here as a man who had been led into ambush, with reference to what you did to the Comptroller? A. Not in that sense, no. You are taking a different method of interrupting me, sir. I hadn't finished the statement that I had made. I was going to

1114 describe exactly my feeling. Having come there in that frame of mind, on the suggestion of one of the public officers of this state, the Public Service Commissioner, and by the direction of another, the Court, in an attempt to work out that solution, this letter of the Comptroller was suddenly read containing statements which to my knowledge were not only false but which were directly antagonistic to the spirit in which the conference had met, and were a direct attack, as it seemed to me be a false attack, upon the tribunal which had sent
1115 me there. I therefore at once arose, pointed out the falsity and said that that letter with those statements in it ought to be referred to the Court which it attacked. My object in doing so was that of an officer of the Court which has been attacked, to have sent to the Court the letter or the paper containing the attack on that Court. In that way I behaved in no different, according to my own intention, in no different way from what I would in any gentlemen's intercourse. If at a conference of my friends or my agents somebody should send a personal attack on me, I should not think it was
1116 out of the way for one of my friends to say that that ought to be referred to the person whom it attacked, instead of having to be first—

Q. Suppose your friend had an interest in the subject matter? A. If it was no other than the interest that you have described me as having, it would not change my views in the slightest.

Q. Not at all? A. Not at all.

Q. Did you know that Mr. Craig was a lawyer at the time that you started for Judge Mayer's chambers? A. Well, I never had seen Mr. Craig before that time. I knew he was Comptroller of

New York; I think I knew he was a member of the bar, but of that I am not sure. 1117

Q. Well, do you remember that—just to spur your recollection a little bit—do you remember that you were counsel for Colonel Roosevelt on an occasion when Mr. Craig cross examined him; do you remember that incident? A. No, sir.

Q. You don't recall that? A. To what occasion do you refer?

Q. I am trying to ask you whether you recall it? A. I don't recall it at all; I don't ever recall being counsel for Colonel Roosevelt in court.

Q. Well, now, when you started for Judge Mayer's chambers, do I understand that you started in such a hurry that you did not wait for the letter? A. No; it is my recollection that we adjourned quite late and I asked Mr. Nixon whether the letter was ready; this I am free to say; my recollection is not very distinct but I remember asking whether the letter had been copied, he having said during the course of the conference that he would have a copy made, and my own recollection is that it was not ready and that I came away without it, but of that, as I say, I am not sure. I heard Mr. Nixon testify the other day. All I can say is the best of my recollection differs with him. 1118 1119

Q. Did you, before you left, denounce Mr. Craig in unmeasured terms to Construction Commissioner Delaney? A. I did not. I don't think I have ever talked to Mr. Delaney in my life.

Q. Didn't you wait after the conference was over to express your hostility and your feelings against Mr. Craig to Mr. Delaney? A. I certainly did not.

1120 Q. I will use The Sun of October 7, 1919. I refer to this statement (reading): "Although reporters had been excluded from the conference before Comptroller Craig's letter was read, it was learned that the Comptroller's statements regarding the availability of information concerning the financial affairs of the traction companies, particularly the Interborough, were hotly combated by the representatives of that company present, and also of the New York Railways Company. Henry L. Stimson, counsel for Job E. Hedges, receiver of
1121 the New York Railways Company, was said to have been particularly severe in his characterization of the Comptroller's statements, and he is credited with having first drawn Judge Mayer's attention to the contents of the letter. Within an hour after the letter had been presented to the conference Judge Mayer issued the following order to United States Attorney Caffey: 'It is hereby ordered that the United States Attorney advise the Court by formal information concerning the conduct of one Charles L. Craig on October 6, 1919, at which time he is reported to have published or caused to
1122 be published a written communication addressed to the Hon. Lewis Nixon, Public Service Commissioner, No. 49 Lafayette Street, New York City, concerning the orders and action of this Court in a pending cause or causes. Julius M. Mayer, United States District Judge.'" "Within an hour after the letter had been presented to the conference Judge Mayer issued the following order to United States Attorney Caffey"—is that substantially correct? A. No, sir. What I think is correct is that the stenographers' minutes, which I have read over since this proceeding began, are substantially correct in their report of what I said, and I have

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no recollection of saying anything at all to Mr. Delaney or anything except what I said in that open conference on that subject.

Q. Now, do you know, and this is asking you a categorical question, do you know what time you left the office of the commission; now, that calls for "do you know?" A. I do not. Do you mean in an accurate sense?

Q. Yes, that is what I am getting at? A. No, I do not.

Q. Do you know what time you got to Judge Mayer's chambers? A. I do not.

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Q. Do you know what time the order was issued? A. I do not.

Q. Did you stay there while the order was drawn? A. I don't think so.

Q. Well, the newspapers report the fact that you went to District Attorney Caffey's office. Did you go there and draw the order? A. I did not.

Q. Did you go to his office? A. I did.

Q. On this business? A. On this business; yes, sir.

Q. Who did the typewriting? A. I don't know, sir.

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Q. Was it done in Judge Mayer's chambers or in District Attorney Caffey's office? A. What typewriting, sir?

Q. The typewriting of this order? A. I don't think I ever saw the order.

Q. Why, are you sure about that? A. No, I am not sure, but I don't think I did. Do you want to know what my recollection is?

Q. No, excuse me, Colonel Stimson. Newspaper men are not infallible, but this is a very circumstantial report. Now, you did go to District Attorney Caffey's office? A. I did.

1126 Q. Whom did you see there? A. I saw Mr. Caffey himself.

Q. And did you take a message from Judge Mayer to Mr. Caffey? A. I did; I took a copy of the letter.

Q. And so the order drawn was dictated while you were there? A. Not to my recollection; I carried a verbal direction from the judge to take the letter to Colonel Caffey, and to direct him to institute proceedings.

Q. Now, up to that time, Mr. Stimson, you knew
1127 that there had been no publication in the press? A. No.

Q. You didn't know either way? A. No; I don't think that I did know either way.

Q. I am asking you exact information. We have the time sheets of the publications here and I don't wish to go astray, and that is the reason I ask you whether you are sure? A. I don't want to go astray and I don't want to have you attempt to give an appearance that I am going astray.

Q. Well, there is no fear of that? A. There is no fear of my doing it, sir.

1128 Q. Then neither one of us is afraid of the other. Do you know whether there had been any publication of this letter before you were in District Attorney Caffey's office? A. My recollection is that I had heard while—

Mr. Mooney: I move to strike that out, your Honor.

The Witness: If you mean "know" in the sense of personal knowledge—I did not.

Q. Did you recognize the original order which is taken from the files of the clerk? A. No, I don't

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think I have ever seen that before, sir. I am stating my recollection.

Q. I know what you have said on the point of taking notice of it, but it is going to become a question of time and circumstances, and as it is only about five lines I will read it (reading): "United States District Court, Southern District of New York. United States of America, Plaintiff, vs. Charles L. Craig, Defendant. It is hereby ordered that the United States Attorney advise the court by formal information concerning the conduct of one Charles L. Craig on October 6, 1919, at which 1130
time he is reported to have published or caused to be published a written communication addressed to Hon. Lewis Nixon, Public Service Commissioner, No. 49 Lafayette Street, New York City, concerning the orders and actions of this court in a pending cause or causes. New York, October 6, 1919. Julius M. Mayer, United States District Judge." On the back: "Matter of Charles L. Craig. U. S. District Court. Filed October 6, 1919. S. D. of N. Y.," and then "16" above the line, and "505." A. Will you, in view of your last question, have the question that you last asked me read so that I 1131
can see whether I answered it under misapprehension?

Q. (Question repeated as follows: Do you know whether there had been any publication of this letter before you were in District Attorney Caffey's office?). A. When you asked me that question, Mr. Mooney, I understood it as referring to the giving out to the newspaper representatives, that you used "publication" in that sense, in that restricted sense. I answered it in that way. I did know personally of the publication of the letter at the conference.

1132 Q. Well, that was not what I asked you, Mr. Stimson, and if you will excuse me for saying so, without matching legal knowledge, the question of whether that is or is not publication is a matter of very great importance. A. For that reason I wanted to be very careful how I answered it, that is all, sir.

Q. Do I understand that your view was then as expressed now, that the reading of it at the conference was a publication? A. Are you asking my opinion?

1133 Q. I say, was it your opinion or your view then? I am not asking you as a question of abstract law. Was it your opinion or view then that the reading of that letter at that conference was a publication? A. I think it was, sir; I think that was my view.

Q. That was your view then? A. Then.

Q. Well, now, I will ask you, didn't that savor to you of an ambush that a man should be asked to come to a conference, and then when he writes a letter because of public duty and cannot get to the conference, that those who represented different views than his should say, "Well, the answer

1134 that you've sent to our conference leads you to jail and I am going to see that you get there"? A. You think it is an ambush that when a man is invited to come to a conference and writes an answer to them, to have the answer read to the conference?

Q. No, not at all, but to have a man who has an interest and a hostility, such as you have described, and only such as you have described, to have him start off, with the answer to the letter, to the Judge, to put the man in jail, don't you think that that is an ambush? A. Not in the slightest degree, sir.

Q. Did you realize, Mr. Stimson, that the read-

ing of that letter at that conference was an acci- 1135
dent? A. I did not realize that it was an accident; no, sir.

Q. Now, you know when people get lined up on one side of a case or another they get pretty strong feelings, but just assume, for the purpose of my question, whether you think this man is a false man or whether he isn't, that when he sent the letter to the conference he had no more object—

Mr. Matthews: Mr. Mooney is asking ques-
tions repeatedly here containing false as- 1136
sumptions, or certainly assumptions that are not justified by anything that has so far appeared in the record. I object to that form of question and that type of examination.

Mr. Mooney: So far as it appears in the record, I assume it is never a good objection. I don't suppose we want to keep Colonel Stimson on tap here for the rest of this hearing. I can accommodate myself to any situation that my adversary has forced me into, but it is put there as an assumed position, and we know enough of the sur-
rounding circumstances from the stenogra- 1137
pher's minutes that this paper was handed up wet to Mr. Nixon. Why Mr. Nixon read it at this meeting nobody in God's name will ever know.

Mr. Caffey: I wish to put the objection upon another ground; it is patently irrelevant.

The Court: I will sustain the objection on that ground.

Mr. Mooney: One ground is as good as another as long as it goes out.

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Mr. Caffey: I have not made so many objections here because I did not want to waste time.

Mr. Mooney: I don't think that anything is a waste that calls a man like the Comptroller of the City of New York to the bar at the instigation—because that word is a fair word to use, an "instigation"—of this witness. If ever a man should be cross-examined to the very remotest degree; and if ever my opponent should subside that it might be
1139 done, so that the world may know why one man should try to get the best of another through process of the dignity of the court, this is the time and this is the occasion, and I am astounded beyond measure at the attitude of the District Attorney, who, under ordinary circumstances, would be the first man to uphold not only the dignity of the bench by the position of the bar, because it is the bar that is on trial in the cross-examination of this witness. It is a question whether one man can go and get an interest
1140 served or a spleen satisfied by putting another upon trial for contempt of court. This question will not die.

The Court: I have ruled and I think we have had quite enough of that.

Q. Do you know, as a matter of fact, and this is a categorical question, what time you left the District Attorney's office on that occasion? A. I do not.

Q. Do you know when you first saw the letter published in the paper? A. You mean in the newspaper?

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Q. Yes, in the newspaper? A. Oh, I don't recall at all, sir. I don't recall at all.

Q. Now, when you went on the stand, Mr. Stimson, and characterized under oath, as you did at this conference, these statements of the Comptroller as being false, you did so as a man who, in addition to what has already been described, has been publicly charged in a public hearing in the City of New York by the defendant in this case, as having acted as an errand boy in carrying this letter to initiate this proceedng?

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Mr. Caffey: I object to that.

The Court: Exclude it.

Mr. Mooney: I am doing this for the purpose of showing his bias and hostility. There must be some ability to show that.

The Court: I have excluded the question.

Q. Well, I will simplify it because you are not to answer it. A. I think he charged me with being hs errand boy.

Q. It gets in anyway. This is going to be a beautiful case. These witnesses are bursting to tell the truth and whenever we are not looking at them the truth escapes.

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The Court: What was the answer?

Answer repeated as follows: "I think he charged me with being his errand boy."

The Court: Strike it out.

Mr. Mooney: You cannot strike it out of the minds of this community with all the cleansing fluid that was ever manufactured in the world.

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Mr. Caffey: The difficulty is that the questions are dressed to try a case before the Magistrate's Court. I object to the further examination along those lines.

Mr. Mooney: The witness feels badly enough for having volunteered his statement. Don't let us punish him any more.

Mr. Caffey: I object to the continual remarks made by Mr. Mooney which have no relevancy to the case.

Mr. Mooney: Don't reprove the witness;

1145 this witness is being extinguished now.

Q. Mr. Stimson, you have characterized the statements of the Comptroller in this letter as false, and you, I assume, have done so advisedly? A. You mean when I spoke before the—

Q. No; you've said it here on the stand? A. Yes; I haven't changed my view. When I heard the letter read, although I only heard it read for the first time, it struck me as containing a number of false statements. I haven't changed my opinion as to those.

1146 Q. You realize that that puts you in a rather substantial position of an accuser, don't you?

Mr. Caffey: Objected to as irrelevant.
The Court: Sustained.

Q. You know that it is upon your statement that it is false that the prosecution depends, don't you? A. Not at all, sir.

Mr. Caffey: Objected to as irrelevant.
The Court: Sustained.

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Q. You gave your answer too quick. A. I am a poor witness, I am afraid.

Q. No, you are a mighty good one. Now, is your statement as to the falsity, is it directed to any particular phrase in this letter?

Mr. Caffey: Objected to as material and irrelevant.

The Court: Sustained.

Mr. Mooney: I except.

Mr. Mooney: Why, your Honor, can he go on the witness stand and say this is false 1148
and then not allow me to examine him on that?

The Court: The question is entirely inadmissible, and nobody objected and I did not care to exclude anything not objected to. This witness' opinion or any other as to what is false is entirely incompetent; it is a question of fact.

Mr. Mooney: I do not wish to let that statement go by with any thought that the elicitation to which your Honor refers was objected to by me with respect to matters 1149
not of fact.

The Court: I meant to say no objection was made to the question by the District Attorney.

Mr. Mooney: I asked for a statement of mind but the witness proceeded to state matters of fact, among which was his statement of fact that it was false.

The Court: I think the witness answered.

Mr. Mooney: Now, so that there shall not be any question about it and so as to shorten the examination, as I understand it your

1150 Honor rules that any examination of him on the subject of the paragraphs of this letter when he then thought or has now sworn were false, is irrelevant; am I right?

The Court: I will allow any examination that goes to the question of fact. He has sworn, so far as he was concerned, no access was denied to the defendant or any member of the Board of Estimate of any original sources of information, or any information whatever, in respect of property
1151 in charge and possession and custody of the Receiver of whom he is of counsel. Now, if there is any question looking to the denial of that fact, that question is entirely relevant and material to the controversy, but if there is any question as to the witness' opinion or point of view about something, that is utterly irrelevant and utterly immaterial and incompetent. We are dealing here on this branch of the case solely with questions of fact, and in order that I may not be misunderstood, when I said that the
1152 question or questions was or were not objected to, I was referring to the fact that the Government failed to object to the question and therefore I did not desire to volunteer to exclude them. I was not referring to any objection of yours.

Q. I apply myself, in view of what his Honor has said, to that part of your examination in which you were asked with respect to a paragraph in the letter referring to denying access to original sources. Now, did you understand, in giving your

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answer to that question here, that you were being asked with reference to a statement in the letter which forms the basis of this prosecution? A. No; I answered the question on its merits.

Q. Did you recognize its relation to the letter? A. Not by notation; only in a general way, Mr. Mooney, but I answered the question on the English of the question, the merits of it, as I understand them.

Q. Did you know, applying yourself to what you understood, as you have just said here, that no man could give access to the original sources re- 1154
lating to the railway affairs of the City of New York unless he allowed a searcher to go into them; did you know that?

Mr. Matthews: I don't understand the question.

The Witness: I don't understand the question.

Mr. Mooney: I want to keep off forbidden ground.

The Witness: Will you read the question to me?

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Question repeated as follows: Q. Did you know, applying yourself to what you understood, as you have just said here, that no man could give access to the original sources relating to the railway affairs of the City of New York unless he allowed a searcher to go into them; did you know that? A. Not wholly; no, sir. I did not fully understand the question. I have not been in the courtroom during the whole of this trial and I don't quite understand what you refer to, sir.

1156 Q. Well, did you know that the books in your possession were in many respects incomplete because some of them had been destroyed and some of them were bogus books; did you know that fact?

Mr. Matthews: I object.

The Court: I will sustain the objection because I undertsand the question referred to matters, if any, prior to the receivership, and I direct counsel to ask no further questions on that. As stated by the District At-
1157 torney, you seem to have some matters here as if they belonged to the controversy which have no relation to the controversy whatever, and which should be known by counsel to have no relation to the controversy, and I direct counsel to ask no further questions along that line, to which you may have an exception if you desire.

Mr. Mooney: I except, your Honor, and your language is of such a nature that it would be a brave man who would attempt to avoid the effect of it or to trifle with it,
1158 but I would not being doing my duty to the court nor to my client either if I did not point out to your Honor that the assumption of your ruling, which is inspired largely by the District Attorney, is not the purpose or intention which I am trying to develop, and I hesitate very much to indicate to you further than I have by my questions lest I fall under the condemnation of the court, but this is in no sense what counsel has attempted to do.

May I state in one word, and then perhaps shall I proceed—may I state in a word the

very serious error into which we are falling? This is no desire on my part to try my wind. This is no flight into fancy with me. We are endeavoring to show here that the orders that your Honor made and that this witness said, with due respect, were utterly and absolutely futile. You could not give a Comptroller access to original sources by any suggestion that you were opening up to experts or to inquiry, things that might be in the books. The only way which we contend in which that could be done was by people going in and reconstructing the books. Your Honor has never heard me on this point. I don't want to have the thing go astray; it is a great, big point, and if you feel that these rulings govern it, all well and good. But just consider that for a moment. I do not want to bring Mr. Stimson back here as my witness, but will you consider for a moment—will your Honor allow me to present an argument to you which was cut short before which your Honor's mind seems to be made up upon, but which I feel, if it is outlined to you, you may have a different view with respect to altogether?

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The Court: I did not close my mind to any argument, but the question is not as to reconstruction of books or the difficulty of ascertaining what books contained or what might have been contained in missing books. The issue so far as concerns this particular feature is very, very simple. The letter says that there must be a reversal of policy for which the Judge is responsible of denying, and so forth. Now, the sole question is

1162 whether there was any such policy or whether there was any such denial, and all the rest of it is utterly immaterial and irrelevant, and the court proposes to keep, if it can, the inquiry to relevant and material subject matters.

Mr. Mooney: The point was, your Honor, and I do not wish to prolong the discussion—the point was and is, you are ruling upon a certain concept of the letter of which you have very definite ideas with respect to, nat-
1163 urally. The letter, we say, should be read as a whole, and we say this, that while the court has directed the filing of the information, the witness on the stand inspired the prosecution with a certain view of this letter in his mind, and that the court has the same view of the letter in his mind, and while it does seem as though it is almost an impossible task for one man to make another read the English language in a different way than it appears to that other, such things are not beyond possibility, if the court will listen
1164 now to the subject that has never been discussed before. It was an occasion at which I attempted to address myself to this court and your Honor made an observation, according to the stenographer's minutes, which indicated that you had read and made up your mind, and there was no reason why I should carry out a discussion along those lines. But in a very brief situation, it is this—we feel, with all due respect to the court, that if Colonel Stimson had not presented this letter to the court from the as-

pect and in the way that the words that the court is responsible for a policy that had denied access to original sources—if he had not presented that from the standpoint that it meant that the court had denied us information from the books of this railway, there would never have been any prosecution. 1165

Now, the English in this letter as we read it—and I am very serious about this and it is not ordinarily the thing to say to a court, but I am saying it because of my respect to the court and not because of any lack of respect—I say the court up to the present time has read this letter amiss, and that those into whose hands it has fallen and who have inspired the prosecution have read it amiss. What the Comptroller had in mind is as plain to a man who deals in figures as anything can be, and that was that by refusing to appoint a receiver who could search and work and reconstruct these figures, that by that fact the court had denied access to the original sources. The thing about this letter that nobody seems to understand is this question of original sources. Now, I am making an argument to you on the history of your own court. 1166 1167

Now, this thing of original sources came up before Judge Lacombe, and before these proceedings get through the opinion is going to be offered in evidence, and Judge Lacombe found that his assumption was as ineffective as your Honor's assumption turned out to be and as it ever will be. Now, the fact of the matter is that the complaint that the Comptroller made in this letter was with

1168 respect to the original sources, and as we have to sit here and as we do sit here, because we are a defendant before the court, and we listen to the stream of evidence as to what these gentlemen did or did not do with respect to accountants' reports and books when some of them were lost and the rest of them were bogus, so far as we are concerned this is entirely beside the question, and if we were the court we would say that it is not what we are on trial for and
1169 that is not what we ought to be prosecuted for.

Now, the pith of this case is that if this letter be read aright, if it be read as the English language should be construed, in our view of it and as was intended by the letter, that the moment that your Honor appointed the Receiver and at the same time said that the Comptroller should not be a co-receiver offered by the City of New York for that purpose, that because of something that you did not know and could not know
1170 unless you had the wisdom beyond all men and knew every step and knew every cranny of these ramifications; that when you reached that point you did, unwittingly it may be and undoubtedly it was, but you did unwittingly deny to the City of New York the access to the original sources, because, sir, as it will develop in this case and as is probably well known to you, and this is not a statement of fact because these things are matters of public record—it is a fact that cannot be denied—that unless a person goes to the original sources, and unless

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he does what an accountant did once before at the time when Judge Lacombe was trying to run the Metropolitan Street Railway and reconstruct the books, it is a denial of information, and I say that with all respect and still with all earnestness, because I have stated the thing from the bottom to the top, that your Honor by those things that have been put before you and put before the Court and these receivers, you have been deluded in a way that is almost monstrous to a man. You have been deluded because they don't 1172
exist there, because checks drawn out for $500,000 and $900,000 are not on the books of this corporation.

The Court: I understand it all and I adhere to my ruling.

Mr. Mooney: Well, we except. Your Honor takes into account, I presume, these remarks in adhering to the ruling; that goes without saying?

The Court: Yes.

Q. Did Judge Mayer tell you to go to Colonel Caffey? A. He did. 1173

Q. And what did he tell you to say or do?

Mr. Matthews: I object as irrelevant and immaterial.

The Court: Sustained.

Mr. Mooney: I except.

Q. Will you state the conversation that you had with Judge Mayer?

Mr. Matthews: Same objection.

The Court: I will allow that.

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A. Why, my recollection is that I told Judge Mayer of the conference and, according to my recollection, when the letter came in. It came in shortly after I arrived if I didn't bring it. I laid that before Judge Mayer. I think there were other people present who had been at the conference, though of that I am not certain. I haven't the facts very fully in my mind, but I told him that this letter had been read at the conference and that it seemed to me that he ought to know of it. I think that is all I said.

1175 Q. Well, what did Judge Mayer say?

Mr. Matthews: Same objection.

Mr. Caffey: Immaterial.

The Court: I will let him answer that.

A. Judge Mayer read the letter, and after having read it and thought it over, apparently, he directed me to take it over to the District Attorney and to give it to him, and my recollection is that he directed me to tell the District Attorney to file a presentment on the letter. I don't recall that I ever saw the order that you showed me a little while ago; again my recollection may be at fault in that, but my recollection is that it was apparently that.

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Q. Did you say anything more to Judge Mayer?

A. Nothing that I recall now.

Q. Have you tried to recall the conversation?

A. I have, since you've asked me; yes, sir.

Q. You did not repeat to him what you had said to the conference about the letter or its contents?

A. No, but I think someone else who was there told him that I had, or had told him before I got

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there, that I had spoken after the letter had been read there in substance what I had said.

Q. And what did you say? A. I don't recall that I said anything about that, although I remember the subject being mentioned by someone else.

Q. And what did that someone else say in your presence? A. I think, as I recall it, the someone else said that Mr. Stimson got up and protested against the truth of the letter, something to that effect. I am just speaking from memory.

Q. And then did you say anything when that had been said? A. No, not as far as I recall it.

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Q. Of course, Mr. Stimson, when you said, "I think that a copy of that letter should be sent at once to Judge Mayer," you had an idea in your mind, didn't you? A. I had an idea in mind that the Court should see the letter and guide himself according to the statements of the letter as it struck him. I didn't argue the letter to the Court; of that I am certain.

Q. You say you didn't argue the letter, but you certainly intended to do something when you used that observation? A. I did. I intended to have it brought to the attention of the Court, and I regarded my duty as fulfilled when I did that.

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Q. Well, I don't see what duty you had. What duty did you have?

Mr. Matthews: We have gone all over that once.

The Court: Sustained.

Q. Well, you certainly knew what the point in your mind was, didn't you; you knew that it had formed an impression on your mind that it was contemptuous, didn't you?

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Mr. Matthews: I object. I don't think the witness' state of mind is at all material or relevant.

The Court: Sustained.

Mr. Mooney: I except to that, your Honor. As I stated before, and as I suppose everyone understands, the witness is the one who inspired this prosecution.

The Court: I understand.

Mr. Mooney: There is no use in my pursuing that course any longer.

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Q. You recall these dates pretty well, do you; you know that the letter to which we are addressing ourselves was written in October, do you? A. I recall the date of the letter, yes, October sixth.

Q. Do you remember that there was a hearing before his Honor on September 11, 1919? A. Well, I couldn't recall it by date.

Q. Just look at this book. This is a pretty nice looking book. Receivership Record, Volume 2, Part 2. Do you remember stating on that occasion: "I have only to call your Honor's attention,

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because it is recent history, to the way in which that constructive effort was met by the city authorities. Although they had been warned for two years at least of what the situation was, and what the need of revenue was, and what the result would be if such revenue was not obtained, the City, through its agents, strenuously opposed that, through the voice of its Mayor in the public print, repeating statements which were wholly unfounded and untrue, and attributing the situation of this company to things that no longer existed, the payment of rentals; through the voice of its Corporation Counsel repeating charges which the

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sworn evidence before the Public Service Commission, at which his office was represented, and himself represented frequently, showed to be wholly unfounded. Every effort so far as the public authorities of this City were concerned—and I distinguish sharply from those of the State—every effort was made not only to balk an effort to keep this system together in the interest of the public welfare and convenience, but to sow in the minds of the ignorant of this City the seeds of distrust and suspicion and ill-founded attack which are bound to produce the whirlwind whenever the in- 1184
evitable occurs." Do you remember saying that (handing book to witness)?

Mr. Caffey: I object as immaterial.
The Court: Sustained.
Mr. Mooney: That is all.
The Court: That is all.
Mr. Matthews: I think that is all.

By Mr. Mooney:

Q. Give the names of the persons present in Judge Mayer's chambers when you were there, 1185
please? A. I cannot speak with absolute certainty, but I think that Mr. Sheffield, representing one of the receivers—I am rather guessing now; that is all that I can remember.

Q. Well, it was a railway atmosphere anyway, wasn't it?

Mr. Caffey: I object.
The Court: Sustained.

1186

JAMES R. SHEFFIELD, a witness produced on behalf of the Government, after being duly sworn, testified as follows:

Direct Examination by Mr. Matthews:

Q. Are you the trustee in bankruptcy of the Interborough Consolidated Corporation? A. I am.

Q. Were you the trustee in bankruptcy on October 6, 1919? A. Yes.

Q. And for how long prior thereto? A. I was
1187 appointed receiver in bankruptcy on the twenty-first of March and was made the trustee in bankruptcy by election of the creditors some five weeks later, I think.

Q. What is the Interborough Consolidated Corporation? A. The Interborough Consolidated Corporation is a holding company which owns some thirty-three odd millions of the par value out of thirty-five millions of the stock of the Interborough Rapid Transit Company, and some fifteen millions out of seventeen millions total par value issued and outstanding of the stock of the New York Railways Company. It also owns stock in the
1188 New York Transportation Company.

Q. The New York Railways Company is a corporation, or was a corporation, and still is, I suppose, operating street railway lines in the City of New York? A. Yes, known as the Green Car Lines.

Q. And the Interborough Rapid Transit Company is a corporation operating subways under the streets of New York? A. Yes, and by control, through a lease, the Manhattan elevated.

Q. The Manhattan elevated lines? From the time of your appointment—these lines run in

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and through the Borough of Manhattan? A. Yes.

Q. Both the New York Railways and the elevated lines and the subway lines? A. The subway also extends to other parts and the elevated, too, to some extent.

Q. From the time of your first appointment, that is, your appointment as receiver, did you take possession of the books and records and papers of the Interborough Consolidated Corporation? A. Yes.

Q. And did you continue in possession and custody of them down to October 6, 1919? A. Yes.

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Q. Did you, at any time after your appointment and down to and including October 6, 1919, deny access to any original sources of information in your possession to the defendant, Charles L. Craig? A. No.

Q. Did you deny such access to such information to any other member of the Board of Estimate and Apportionment during that period? A. No.

Q. Did you deny to the defendant any access to any information or sources of information in your possession during that time? A. No.

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Q. Did you deny to any other member of the Board of Estimate and Apportionment any access to any information of any kind in your possession as such receiver or trustee during that period? A. No.

Q. During that period what was the policy of yourself, as receiver, and later as trustee, with respect to furnishing information or giving access to information in your possession to members of the Board of Estimate and Apportionment?

Mr. Mooney: I object to that as incompetent.

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The Court: Overruled.

Mr. Mooney: I except.

A. The policy was to give all information that was requested and to offer to give information to anyone connected with the city authorities or the Rapid Transit Commission or the Public Service Commission.

Q. I show you Government's Exhibit No. 26 for Identification. Does that contain a copy of a memorandum filed by Judge Mayer on September 6,

1193 1919 (handing document to witness)? A. Yes.

Q. Does it also contain a copy of a letter signed by you as trustee? A. Yes, I am one of the signatories as trustee.

Q. Did you sign the original of that letter? A. Yes.

Q. When? A. It would be very difficult for me to give the exact date.

Q. Well, does the date on the letter refresh your recollection as to the approximate time? A. It was undoubtedly either on that date or possibly the day before; I don't know; I can't tell you that my

1194 signing and the date were the same day, but, of course, approximately and probably the same.

Q. Will you state what was done pursuant to the policy you have already stated to exist? A. You refer to granting information or offering information?

Q. Yes, offering access to records or sources of information.

Mr. Mooney: I assume that is to be confined to acts within his own knowledge?

The Court: Yes.

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Q. Things he did; instructions he gave? A. I instructed Mr. Fisher, who is the secretary of the Interborough Consolidated Corporation, to give the widest possible use of our offices, our books, any sources of information that were desired, to the city authorities. I asked him to transmit a similar order to Mr. Campbell, who is also the treasurer of the Interborough Consolidated, as well as the treasurer of one or two of the other companies; and the auditor was also requested to give any information that was asked, and while I am not entirely confident of the correctness of the statement, 1196
I am of the impression that in the room adjoining my room, in the offices of the Interborough Consolidated Corporation, there were members of the staff of one of the city departments having access to these books at the time.

Mr. Mooney: I move to strike that out, your Honor, the latter part.

The Court: Motion granted. The latter part is stricken out.

Mr. Matthews: That is all.

Cross Examination by Mr. Mooney: 1197

Q. Mr. Sheffield, you do know that this paper that you sent out, as you say, of which you were one of the signatories, you know that that was a mere estimate, don't you, by the— A. It was a preliminary report.

Q. And it was based upon estimates, wasn't it?

Mr. Matthews: I submit that the report speaks for itself.

The Court: I will allow it.

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A. Well, I assume that portions of it, from the internal evidence of itself, was probably based on estimates. Certainly as to future earnings they must have been based on estimates.

Q. And in some respects the railroads have been pleasantly disappointed in that respect, haven't they?

Mr. Matthews: I object to that.

The Court: Sustained.

Mr. Mooney: I except.

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Q. Well, to put it in serious language, the prognostication made by these learned experts has turned out to be fallacious, has it not?

Mr. Matthews: I object to that.

The Court: Sustained.

Mr. Mooney: I except.

Q. What is there in this paper that you say you were one of the signatories to that would be of any use to the Board of Estimate and Apportionment of the City of New York in considering whether

1200 franchises should be changed?

Mr. Caffey: I object to that as immaterial.

The Court: Sustained.

Mr. Mooney: Now, may we assume, for the purposes of this witness' cross examination, your Honor, that the same line of examination would be directed to him that your Honor has ruled out with respect to the last witness?

The Court: Yes.

1201

Mr. Mooney: And that you make the same ruling and we take a similar exception?

The Court: Very good.

Mr. Mooney: That is all.

Mr. Matthews: That is all.

LEWIS STARK, a witness called on behalf of the Government, being first duly sworn, testified as follows:

1202

Direct Examination by Mr. Matthews:

Q. On October 6, 1919, were you a reporter on the New York Times? A. I was.

Q. Did you prepare a story for the Times based on the letter from Mr. Craig to Mr. Nixon? A. I did.

Q. Did your story, based on that letter, appear in the Times of October 7, 1919? A. It did; yes, sir.

Q. Is that a copy of the Times for October 7, 1919 (handing paper to witness)? A. Yes, sir, it is. 1203

Q. At that time was the New York Times a newspaper of daily and general circulation throughout the City and County and State of New York? A. It was.

Q. What was the source of your information for the story? A. The source of my information was the letter sent out by the New York City News Association.

Q. Where is the New York Times published? A. It is published at 217 West 43rd Street.

1204

Q. In the Borough of Manhattan? A. Borough of Manhattan.

Mr. Matthews: That is all. I offer the Times, the paper in evidence.

Marked Government's Exhibit 28.

Cross Examination by Mr. Mooney:

Q. You were just an inside man writing the article, is that it? A. Well, I was an inside man; I
1205 am a general workman who was assigned to cover the story.

Q. But you did not get in contact with the story being placed outside of the Times office, did you? A. I did.

Q. Where did you get in contact with it? A. I came down to the Federal Building and attempted to learn from Colonel Caffey how long such a proceeding might take.

Q. I observe in the article that there are some observations with reference to the proceedings here in the Federal Building. Do you recall that part of it? A. Yes, I recall that newspapermen who
1206 were on the story and who met in the building here obtained that information, that is, that Colonel Stimson came to Colonel Caffey's office, with that order referred to.

Mr. Matthews: I move to strike out the answer as obviously based on hearsay.

Mr. Mooney: Well, the thing is in and you put it in.

The Court: I will allow it to stand showing what information he got.

1207

Q. Yes, I only want to show the continuance of the article. Now, the heading of the article, "Mayer to punish Craig for Rebuke," that is written by a man in the office, isn't it? A. Yes, sir; that is, I had nothing to do with the writing.

Q. You newspapermen, you don't furnish headings? A. No, sir.

Q. But the article as it is printed, after it is made up by you and put in there, that would be called an article by which Judge Mayer put Comptroller Craig off the map; that is the way that article would be described, wouldn't it, substan- 1208
tially? A. Well, I don't know whether you would describe it in that way or not.

Q. In other words, the feature of the story is Judge Mayer, isn't it? A. Well, it seems to me the feature of the story is the possibility of Comptroller Craig being punished for contempt by Judge Mayer.

Q. In other words, the idea that was conveyed to the public by your remark is that the Court was already in pursuit of the Comptroller for contempt? A. Well, if you want to put it that way, perhaps so.

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Mr. Mooney: That is all.

The Court: Court will now adjourn until May 27th, at 10:30, and will sit throughout that day, and will then adjourn, if the proceedings are still unfinished, until June 7th, at two o'clock.

Adjourned to May 27th, at 10:30 A. M.

1210

New York, May 27th, 1920, 10:30 A. M.

Met pursuant to adjournment.

Present—Hon. JULIUS M. MAYER, Presiding.

MR. CAFFEY, United States District Attorney, and
MR. MATTHEWS, Assistant U. S. District Attorney, for the United States,
EDMUND L. MOONEY, Esq., Special Counsel,
MR. R. L. TARBOX, Assistant Corporation Counsel,
1211 ELI S. WOLBARST, Esq., of counsel, for the defendants.

ALFRED A. COOK, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Mr. Matthews: Before we proceed with the examination of Mr. Cook, I have another witness whom I am very anxious to excuse. His testimony has been substantially covered by the testimony of another man in the City
1212 News Association. The only thing I want to establish by him is that the takes that have been marked in evidence actually went over the City News wires, and that the takes in question were submitted to the City News office at the dates stamped on the originals, which he will produce, and I can offer those in evidence and call the witness if it is necessary.

Mr. Mooney: Perhaps Mr. Mathews, we can dispose of those questions once and forever, and thus shorten the entire examina-

1213

tion of that branch of the case. Of course, you need not answer the query: Is there any contention in this case that there was any publication to or with respect to newspapers before his Honor had issued his order for the institution of this proceeding?

Mr. Mathews: Yes, there is.

Mr. Mooney: I certainly had not apprehended it from the proofs thus far taken. If this is the contention of the District Attorney we will need strict proof along that line. I thought it was mathematically—or to be more exact—chronologically demonstrated that according to the passage of time, your Honor's order preceded the publication in the press, but if there is any dispute about that it would be better to have a decisive issue.

1214

The Court: I think, unless I am greatly mistaken, Mr. Cook's examination will be very brief.

Mr. Mathews: Yes, it will, I will proceed with it.

Direct Examination by Mr. Mathews:

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Q. Mr. Cook, are you familiar with the proceedings in the bankruptcy matter, in the matter of the Interborough Consolidated Corporation, Bankruptcy Case 26690? A. I don't recall the number of it, but I am familiar with the proceedings in the matter of the Interborough Consolidated Corporation.

Q. Are you the attorney for the trustee in that bankruptcy? A. Yes, sir.

Q. How long have you been his attorney? A.

1216

Since the beginning, May, 1919.

Q. And were you his attorney from that period down to and including October 6th, 1919? A. Yes, sir.

Q. That bankruptcy proceeding, I understand, was begun by the filing of an involuntary petition in bankruptcy on March 21st, 1919? A. Yes, sir.

Q. And the corporation was adjudicated a bankrupt on March 28th? A. Yes.

Q. At the time of the filing of the petition in bankruptcy—

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Mr. Mooney: Do I understand that you are examining him as to his exact knowledge? I understand he is counsel for the trustee and not for the receiver. If so, I can scarcely understand how he can be apprised of facts previous to this.

Mr. Mathews: There is no dispute about that.

The Witness: Yes.

The Court: That is a matter of ready record.

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Mr. Mooney: I want to say that these records with which we have been furnished with the bill of particulars are of very considerable and minute importance and it ought not to be taken for granted at all that we either wish to waive our rights in respect to the proofs of these proceedings nor as to the form of proof. For it is not our intention to—to make any waiver in that respect.

The Court: I will allow you to question him. I am quite satisfied that the Court will take judicial notice of its own files anyway.

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Mr. Mooney: Not in a proceeding of this kind, your Honor.

The Court: I think we can.

Mr. Mooney: Of course you are the judge and your Honor makes the ruling, but this is not the only court to consider the question.

The Court: I am also aware of that.

Mr. Mooney: I except to your Honor's ruling.

Mr. Mathews: These questions are all merely preliminary.

The Court: I understand.

1220

Q. At the time of the filing of the involuntary petition, I understood that Mr. Sheffield was appointed receiver? A. I get my knowledge of that from the records themselves. I did not represent Mr. Sheffield at that time.

Q. He subsequently was elected the trustee, and after that you became his counsel? A. Yes. After he was elected trustee my firm was appointed, by order of the Referee in Banruptcy, attorneys for Mr. Sheffield, and I personally had charge of the entire matter and acted as counsel. In fact I am the only member of the firm who has any familiarity with the bankruptcy proceeding at all.

1221

Q. Can you state whether or not the City of New York filed a claim in that bankruptcy proceeding, or had filed a claim prior to October 6th—

Mr. Mooney: I object to that as incompetent and immaterial.

The Court: Yes. That must be shown by the record.

Q. Have you examined the records? A. Yes, I have examined the records.

1222

Q. Down to October 6th? A. Beyond that as to whether any claim had been filed in the proceedings by the City of New York. I did that myself.

Q. Now, will you state whether or not you found—

Mr. Mooney: Same objection.

The Court: Objection overruled.

Q. (Continued) —any such claim? A. I found no such claim.

1223 Q. Has any such claim been served on you as attorney for the trustee? A. No, sir.

Q. Have you also examined the record to ascertain whether—

Mr. Mooney: I think I would not be doing my duty if I did not point out that we are taking a departure from the previous course in this respect, that your Honor has ruled quite strictly on the question of the City of New York and of other officers thereof and the Comptroller, and this question as to the claim filed by the City of New York, I submit, is not a matter which—

1224

The Court: I will take it and give you leave to move to strike out. What is your purpose.

Mr. Matthews: It is part of the general charge of the information that the City of New York did not appear, and filed no claim and applied for no relief in the bankruptcy proceedings.

The Court: Objection sustained.

Mr Mooney: I understand that is stricken out.

The Court: Yes.

1225

Q. Also that no application was made by or on behalf of the City of New York in this bankruptcy proceeding for the appointment of a co-receiver?

Mr. Mooney: I submit that would be immaterial.

The Court: Yes, that would be immaterial.

Q. Or for the selection of the trustee, joined in the election of the trustee?

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Mr. Mooney: I make the same objection.

The Court: Same ruling.

Mr. Matthews: I except. In this instance I am submitting the evidence on this point, sir—

The Court: Yes.

Q. Mr. Cook, will you state what the policy of yourself as attorney for the trustee, and of the trustee, so far as you know it, with the respect to the making available to the defendant, the Comptroller of the City of New York, either in his personal capacity or in his official capacity, access to original source of information in your possession as counsel for the trustee, was?

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Mr. Mooney: I object to that as incompetent.

The Court: Objection overruled.

Mr. Mooney: I except.

The Witness: The policy of the trustee, and mine, under his direction, as counsel, has been to make available to everybody with any interest, and to all of the officials

1228

of the City access to any document or any information in our possession or under our control.

Mr. Mooney: Now, I move to strike out that answer, your Honor, upon the ground that it is not responsive to the question, in the sense that it introduces matter which is beyond the question, and that, therefore, the objection to the question would not reach the answer, and I wish to point that out particularly; that the answer is complex

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and indefinite and incapable of separation or definition in such a way as affect the Comptroller. That was not the question put to the witness.

The Court: Motion denied.

Mr. Mooney: I except.

Q. Did you ever deny any access to the defendant to the records in your possession? A. No.

Mr. Mooney: I make the same objection. Incompetent.

1230

The Court: Objection overruled.

Mr. Mooney: I except.

Q. Did you ever deny access to any other member of the Board of Estimate and Apportionment? A. No.

Q. I ask you the same question not only with original sources of information, but to any sources of information?

Mr. Mooney: We make the same objection.

The Court: Objection overruled.

1231

Mr. Mooney: I except.

The Witness: No.

Q. Was there any order entered in the bankruptcy proceedings which had or could have had the effect of denying to the defendant access to sources of information in your possession?

Mr. Mooney: Objected to as incompetent.

The Court: Objection sustained. You are asking this witness the effect of an order.

Mr. Matthews: That is all.

1232

The Court: You may examine him, Mr. Mooney.

Cross Examination by Mr. Mooney:

Q. Mr. Cook, did you have any relation to the proceeding as to which you have testified before you were appointed counsel to the Trustee? A. No.

Mr. Mooney: Now, your Honor, I move to strike out the testimony of the witness as to all matters prior to his appointment as counsel for the Trustee.

1233

The Court: If there is any testimony as to matters at a time prior thereto it will be stricken out.

Mr. Mooney: Now I want to be specific about it, because I have a specific point in my mind, and I am quite clear the District Attorney has not presented this question cursorily or otherwise than as determinately.

The Court: I thought my ruling covered it.

1234 Mr. Mooney: My point is distinctly: That, by this witness, for the first time is put in the form of question and answer matters relating to records. Now, the record evidence that is brought in by this particular matter is record evidence which my associates and I have directed particular attention to, and as to which we require and expect strict proof, and I do not intend by any silence on my part, nor by failure to object, or to press a point with perspicacity,
1235 to allow anyone to feel that this evidence is to go in by indirection. We demand strict evidence upon the points which have been referred to by the witness in his testimony. Now it appears not only that he has given incompetent evidence over my objections, but it also appears by his answers that he has given evidence as to matters which were in existence long before he had any relation to them. On either or both of which grounds we object, and ask that the evidence be stricken out.

1236 The Court: I will strike out all testimony relating to any documents or papers which refer to any matter prior to the appointment of the witness as counsel, also any other testimony as to matters which occured prior to that time. I should construe his testimony in substance and effect as setting forth that from the date of his becoming counsel to the Trustee he never denied any access to original sources of information nor to any sources of information in his possession to the defendant or to other mem-

1237

bers of the Board of Estimate and Apportionment, and that his policy, so far as he was concerned, was to allow access to any person interested in seeking this information. I think that covers it.

Q. Now what was the date of your appointment as attorney for the Trustee? A. As I recall the formal order of appointment was the 12th of May, 1919.

Q. And the order was an order of Judge Mayer, was it not? A. No, the order was an order of Mac- 1238
grane Coxe, the Referee in Bankruptcy.

Q. Approved by the Court? A. No, I don't think it is necessary under the Bankruptcy Law, Mr. Mooney.

Q. And upon whose application were you appointed the attorney for the Trustee? A. The Trustee in Bankruptcy himself, Mr. James R. Sheffield.

Q. Were you present when he was appointed Trustee? A. I don't think so.

Q. Did you represent any creditors of the company? A. I did not.

Q. Did you have any direct or indirect relation 1239
to the bankruptcy? A. None at all, direct or indirect.

Q. Do you know that only one creditor, viz, one of the railway companies, was the only creditor that was heard or which voted upon the selection of the Trustee? A. Such knowledge as I have as to that, Mr. Mooney, would be gained from a reading of the minutes of the proceedings had before the Referee, and I think I ought to state in fairness that when I gave certain dates as to various appointments I got those dates from

1240 an examination of the records, and those dates I used frequently in preparing the petitions and other papers addressed to the Referee or to the Court. My knowledge is derived from the records.

Q. You have stated that you or the Trustee had done certain acts with respect to giving or allowing information, but your answer contained neither names nor dates. Are you able to give a single name or a single date when you directed information to be given or when the Trustee directed information to be given, with your knowl-
1241 edge? A. I can only tell you a great many.

Q. Now excuse me, Mr. Cook, I want to shorten the examination. Can you give a date or name? A. It was always the date; that was the policy pursued. I can't give you a specific date.

Q. Of course, Mr. Cook, you as a lawyer know that to answer a question which is designed to make a former answer more specific, to be met by the rejoinder of the witness that "it was always" does not allow very much further cross-examination, don't you? A. I know. But, Mr. Mooney, in addition to such knowledge as I have, as a
1242 lawyer, I also have, I hope, some common sense.

Q. I hope you have. I supposed that was a prerequisite of your admission to the Bar. A. Then credit me with it.

Q. I am crediting you with it. I am asking you to do the same. A. I have great appreciation of yours, Mr. Mooney.

Q. Do you think that is an answer to the question which I asked you: "To give me a name or a date" for you to answer "It was always." Do you think that answer is really an answer to my question? Now, to be frank, will you state

whether or not you can give me a name or a date— A. I am trying to be frank with you— 1243

Q. Can you give us a date or a name? A. My best answer to the question, Mr. Mooney, must be, that every day after the appointment of the Trustee and my appointment as counsel was the date.

Q. But you don't know a single date from any other date and you don't know of a single name from any other name— A. You mean, when any particular policy was enunciated—

Q. Or carried into effect. I am not talking 1244 about enunciation. Enunciation is one thing, carrying it into effect is another thing. A. That was the policy from the beginning and it was never changed. I can't answer that any different.

Q. But you can't give a single overt act with respect to that policy, can you? A. The only one, a single overt act—no information was requested by the—

Q. Can't you answer that question? Can you mention a single overt act? A. The only one that I personally recall where information was requested was a reply to a letter of the Corporation 1245 Counsel addressed to Mr. Sheffield, and a reply of Mr. Sheffield's to the Corporation Counsel's letter.

Q. The question was categorical? A. I haven't forgotten any overt acts.

Mr. Mooney: My question being categorical, I move to strike out all of the answer that does not respond to the question. I did not ask for information of the kind volunteered by the witness, nor was it my

1246 intention to incorporate in the record any extraneous matter—

Mr. Matthews: I call your Honor's attention—

The Court: Motion denied.

Mr. Mooney: I except.

Q. Have you answered my question fully? A. May I have the question and the answer read? (Question and answer read to witness.)

1247 The Witness: I have not forgotten any request for information. Yes, that is all. That is a full answer.

Q. Was Mr. Quackenbush retained in connection with the administration of the estate in any way? A. From the time of my appointment as counsel to the Trustee, in no way at all.

Q. Mr. Hedley? A. In no way at all.

Q. Or Mr. Shonts up to the time of his death? A. No way at all.

Q. Were any of the former officers or employees
1248 of the company continued— A. In the bankruptcy proceeding?

Q. Yes, in the employment of the Trustee? A. I know of none.

Q. Who had the books? A. The books were in the possession of Mr. Sheffield, George R. Sheffield, in the office 165 Broadway, which he maintained. H. M. Fisher was appointed his secretary. I think Mr. Fisher was also secretary of the Interborough Consolidated Corporation.

Q. Was that the bankrupt? A. That was.

Q. So that the books were continued in the pos-

session, that is the physical custody of a former officer of the company, in the way you have described? A. Well, I don't quite know what you mean by "physical custody." I don't regard them as being any more in Mr. Fisher's physical custody than they were in Mr. Sheffields physical custody. Mr. Sheffield as Trustee continued the physical possession which he theretofore had I assume as receiver. I have always proceeded on the theory, if you want to know my knowledge on the subject—that the books— 1249

Q. I did not ask for any knowledge which was not embraced in my question— A. I regard the records of the Interborough, as in the possession of Mr. Jame R. Sheffield, as Trustee— 1250

Q. And Mr. Fisher, as his representative— A. Mr. Fisher is Mr. Sheffield's employee, assisting him, Mr. Sheffield in the administration of his trust—

Q. You found him in Mr. Sheffield's employ when you went there as counsel for the Trustee, Mr. Sheffield, didn't you? A. I don't know whether he was in his employ prior to that. I found Mr. Fisher there and I frequently conferred with Mr. Fisher in regard to Interboro matters involved in the proceeding, and I found him a storehouse of information. 1251

Q. I have struck these storehouses of information myself in connection with this. I have got a couple of trucks of books. One of them that has been destroyed. A. I found them very helpful. The information has not been destroyed.

Q. Did you get information from the books? A. I constantly referred questions to M. Fisher, in the administration of the trust, Mr. Mooney,

1252 which you may appreciate, and the questions which I submitted to Mr. Fisher were answered. I have no recollection of any matter that I have called to Mr. Fisher's attention for examination in connection with the administration of the estate where Mr. Fisher has told me that any records have been lost or destroyed.

Q. I am sure he will be glad to hear this. Do I understand then that he has freely disclosed to you information in his possession? A. I think Mr. Fisher would have to tell whether he freely
1253 disclosed information. I have found up to date no criticism of Mr. Fisher in the extent to which he would answer such questions or give such co-operation as I found necessary up to the present in the administration of the trust of Mr. Sheffield.

Q. And he is still in the same position, is he? A. He is still secretary to Mr. Sheffield. Of course, Mr. Mooney, my duty, my obligation is in connection with the affairs of the Interborough Consolidated Corporation.

Q. Naturally. And this information which you have obtained from Mr. Fisher, or some of it, has
1254 that been information which has come from his personal knowledge and recollection and was not to be found in the books?

Mr. Matthews: Wait just a moment. I object to that. Read the question.

(Question read by Stenographer.)

Mr. Matthews: I don't know exactly what the question means. It occurs to me that it is entirely immaterial.

The Court: Objection sustained.

Mr. Mooney: I except.

1255

Q. Have you obtained from Mr. Fisher information that was not in the books?

Mr. Matthews: Same objection.
The Court: Objection sustained.
Mr. Mooney: I except.
The Court: Let me ask Mr. Cook—I think the question was not asked.

By the Court:

1256

Q. At any time since you have been counsel to the Trustee, so far as your personal knowledge goes, has access to original sources, or any sources—I confine the question to original sources—been denied the defendant? A. No.
Q. The same question as to the Board of Estimate and Apportionment? A. No.
Q. The same question as to inquiries of any kind? A. No.
Q. The same question as to any member of the Board of Estimate and Apportionment? A. No.

1257

Mr. Mooney: So far as your Honor's questions may be considered to have been covered by objections and exceptions already taken, your Honor will consider our position, with respect to the questions addressed by the Court, is the same as heretofore indicated, and that by our silence out of respect to the Court, we did not intend to change our course in that respect.
The Court: Quite so.
Mr. Mooney: We except.

1258

CARL M. OWEN, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Owen, you are counsel for the Receiver in the B. R. T. suit, known as Equity Consolidated Case No. E 15,347? A. I am.

Q. How long have you been such counsel? A. Since January 1st, 1919.

1259 Q. And did you continue through the period from January 1st, 1919, to and including October 6th, 1919, as counsel for the Receiver? A. I did.

Q. Do you recall a motion in that proceeding on or about January 15th, 1919, by the Public Service Commission for leave to intervene? A. I do.

Q. Were you present when the petition was argued? A. I was.

Q. At that time did the Corporation Counsel of the City of New York also appear and apply for the appointment of a co-receiver? A. He did.

Q. Was that matter heard and argued? A. It

1260 was.

Q. And the Court at that time delivered an oral opinion and subsequently filed an order? A. It did.

Q. Have you been present at the argument of motions and hearings upon applications and proceedings during the course of the receivership since your appointment as counsel to the Receiver down to and including October 6th, 1919? A. Practically all of them; yes, sir.

Q. Has the Corporation Counsel appeared in person or by assistant at any arguments or applications? A. He has.

1261

Q. Has he participated in the arguments? A. He has.

Q. And been heard by the Court? A. He has.

Q. Will you state whether or not the application for the appointment of a co-receiver made by the City of New York through the Corporation Counsel was ever at any time renewed prior to October 6th, 1919? A. I can so state, yes.

Q. Was it renewed? A. It was not renewed.

Q. Was ever any application to intervene filed on behalf of the City prior to October 6th, 1919? A. No.

1262

Q. Are you familiar with the proceedings involving the four surface railway companies in which Mr. Garrison was appointed receiver also? A. I am familiar with three proceedings.

Q. You mean three separate proceedings or three separate companies? A. Three separate companies.

By the Court:

Q. Name the three companies? A. The Nassau Electric Railway, The Brooklyn, Queens County and Suburban and the Coney Island and Brooklyn Electric Railway.

1263

Q. The Brooklyn, Queens County and Suburban, was that one that you mentioned? A. Yes.

By Mr. Matthews:

Q. Did you mention the Brooklyn Heights Railroad Company? A. I had forgotten the Brooklyn Heights. There were four.

Q. Thereafter was that proceeding in which Judge Garrison was appointed temporary receiver consolidated with the original B. R. T. Equity suit,

1264 known as Equity Consolidated No. E 15,347? A. It was.

Q. And the appointment of a Receiver was made permanent? A. It was.

Q. And has the defendant, Mr. Craig, ever been denied access by you to any original sources of information in your possession as counsel to the Receiver?

Mr. Mooney: I object to that as a conclusion and having no bearing on the issues.

1265 The Court: Objection overruled.

Mr. Mooney: I except.

The Witness: He has not.

Q. Has he ever been denied access to any information, whether original sources or otherwise, in your possession relating to the receivership?

Mr. Mooney: I make the same objection.

The Court: Same ruling.

Mr. Mooney: I except.

The Witness: He has not.

1266 Q. Has any member of the Board of Estimate and Apportionment been denied access to any original sources of information in your possession relating to the receivership?

Mr. Mooney: I make the same objection.

The Court: Same ruling.

Mr. Mooney: I except.

The Witness: They have not.

Q. Has any member been denied any—I am not limiting it to original sources—information in your

1267

possession relating to the receivership or the properties of the Receiver?

Mr. Mooney: I make the same objection.
The Court: Same ruling.
Mr. Mooney: I except.
The Witness: They have not.

Q. What has been the policy of the Receiver and of you as counsel for the Receiver, if you know, with respect to making available to the defendant, giving him access to and facilities for the examination of original and other sources of information in the possession of the Receiver and of you as counsel of the Receiver?

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Mr. Mooney: Same objection.
The Court: Same ruling.
Mr. Mooney: I except.
The Witness: The policy has been to give to the defendant the fullest acccess to all sources of information in the possession or under the control of the Receiver or of myself.

1269

Mr. Mooney: I move to strike that out as complex and involving a series of conclusions and containing no statement as to person, time or place.
The Court: Motion denied.
Mr. Mooney: I except.

Q. I ask you the same question with respect to the other and all members of the Board of Estimate and Apportionment of the City of New York?

Mr. Mooney: I make the same objection.
The Court: Same ruling.

1270

Mr. Mooney: I except.

The Witness: The same policy has been pursued with respect to all members of the Board of Estimate and Apportionment of the City of New York.

Q. In view of Mr. Mooney's objection and your failure to include a statement of facts in your answer with respect to your policy in that regard, I now ask you whether the policy which you have stated to have existed was at any time publicly

1271 stated either on the court records or the public press, or otherwise, or both? A. It was.

Q. I show you a paper, being copy of Government's Exhibit 26 for Identification, and ask you if that is one instance of the public stating of such policy?

Mr. Mooney: I object to the question upon the ground that that is not connected with the defendant and is incompetent.

The Court: I will take it subject to a motion to strike out.

1272 Mr. Mooney: I except.

The Witness: It is.

Q. Was the original of that memorandum filed by you with Judge Mayer in the proceedings of the B. R. T. as indicated there; and the other proceedings indicated there? A. It was.

Q. And did it go out to the public over the signature of the Receiver, Judge Garrison? A. It did.

Q. I am speaking now of the B. R. T. Receiver? A. It did.

Mr. Matthews: That is all.

1273

By the Court:

Q. Let me ask you, Mr. Owen, in respect to Government's Exhibit 26 for Identification, looking now at the first page of that exhibit, beginning with the words "Dear Sir:—Pursuant—" state whether you personally conferred with the Court in regard thereto? A. I did.

Mr. Mooney: Is it polite, or is it proper to make an interjection here?

The Court: Absolutely.

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Mr. Mooney: I wish to call your Honor's attention to the fact that by the question just addressed to the witness the Court is ousting itself of jurisdiction of this proceeding. Because, by that question, the Court is putting itself in the position of possessing primary information, upon subject matter which the defendant is entitled to elicit from the Court as a witness, touching the Court's knowledge as to the facts thus referred to, and that by the introduction of that evidence in the record we are confronted by a witness, who under ordinary circumstances is not sworn and cannot be examined and cross-examined, and who is in effect a silent witness against us. For that reason we wish to state that the course pursued is such as to either oust the Court of jurisdiction or to call for the designation of another judge to hear this proceeding, or for the examination of the Court as a witness. Now, I do not wish to prolong the discussion, your Honor. You probably have the thought; but I do want to say this here:

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That the situation is so unusual that the ingenuity of counsel and the research of counsel would not be able at the present time to exactly phrase or point out the objections which should be stated more definitely or more formally upon the record; but it may be stated generally in the words that it produces a situation that is prejudicial to the defendant's interests.

The Court: If it is a matter of any importance, the Court reminds to counsel, that he
1277 asked at least one witness, perhaps more, "What conversation, if any, the witness had with the Court." I recall that counsel for the defendant asked that with respect to Colonel Stimson. If the counsel for the defendant are not desirous of knowing what the witness stated to the Court and the Court stated to the witness with respect to Exhibit 26 for Identification the matter is utterly immaterial to the Court. The Court's sole purpose was to have this witness set forth fully the circumstances, so far as his knowledge
1278 went, under which Exhibit 26 for Identification was signed and any other facts and circumstances, the Court's purpose being to make perfectly clear all the facts and circumstances, the Court's purpose being to make perfectly clear all the facts and circumstances surrounding Exhibit 26 for identification. While the Court is of the opinion that the objection of counsel is of no value whatever, but as counsel has objected and as counsel apparently does not desire the information the Court withdraws the ques-

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tions and instructs the stenographer to strike out the answers if answered.

Mr. Mooney: The position of defendant's counsel, your Honor is, and has been from the time that the questions were asked and in fact prior thereto, with respect to these matters in which the Court took part that such evidence was all in line with the objection originally made and the request originally made that another judge should be designated to hear this proceeding. The position of the defendant is now and has al- 1280
ways been that he would be confronted by a silent or unseen witness, in the sense that a person is silent and unseen when that mind cannot be probed as a witness? Therefore this is no novelty. It is not a new position assumed by counsel. The point to which—

The Court: I do not desire to interrupt, but I have heard that stated a number of times, and I think that there are limits to repetition. The Court is aware of the position of counsel on the point; the Court is 1281
also aware that the Supreme Court of the United States has held that position to be untenable, and that the Court can hear a proceeding of this kind itself.

Mr. Mooney: In that case the Judge himself was not a witness to a fact that was material to the controversy.

The Court: I don't see that we gain anything by prolonging the discussion.

Mr. Mooney: Your Honor is the master of the situation. I will desist.

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Mr. Matthews: I think it not improper to state at this time that if counsel had desired to insist on the position taken, that there was a procedure prescribed in the Statute, with which he doubtless is familiar, open to him, but which was not adopted by him, under the circumstances which he now seeks to emphasize.

Mr. Mooney: The procedure was not applicable to a situation such as this. The only procedure possible was that which was

1283 outlined by one of the Judges of the Circuit Court of Appeals to which your Honor has referred. As you say the incident is closed and counsel will get nowhere without by carrying it any further.

The Court: Quite right.

Cross Examination by Mr. Mooney:

Q. Mr. Owen, wasn't the date of your formal appointment April 4th, 1919, instead of January 1st, 1919? A. The date of my formal appointment?

1284 That order of Court was April 4th, 1919.

Q. Who had appointed you before that time? A. Well, Judge Garrison asked me to serve as his counsel on January 1st, and I actually did serve and appear as his counsel, but there was no formal order entered until April 4th.

Q. Were you a member of Judge Garrison's firm? A. Yes.

Q. And did Judge Mayer sign the order for your appointment April 4th, 1919? A. I believe it was about that date.

Q. The point is Judge Mayer signed the order? A. Yes.

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Q. And you were actually acting under that appointment on October the sixth, 1919, when you attended the conferences held at the office of the Public Service Commission for the First District, as embodied in this Exhibit B, now shown you? A. Yes, sir.

Q. Were you? A. Yes.

Q. At that conference you heard the letter which is the subject matter of this proceeding read, did you not? A. Yes.

Q. And after you had heard it read you voiced the same sentiments as Colonel Stimson had 1286
voiced in the following words "I have been very glad to hear what Colonel Stimson has just said with respect to this letter"? A. Yes, sir.

Q. And you went on to characterize it as an outrageous letter, didn't you? A. Yes.

Q. Then you were biased, were you? A. Biased as to what?

Q. The letter— A. What I said shows what I was, whether I was biased or not.

Q. No, I am asking the condition of your mind. You were biased as to the letter? A. I don't know what you mean, Mr. Mooney.

Q. Well, I assumed it was a fair question, but a 1287
rather direct one. You were unfriendly to the defendant, were you not? A. No.

Q. You were not? A. No, I didn't know the defendant.

Q. Well, that was your chief grievance, was it not, that the defendant would not come to the conference so that you could know him? A. No.

Q. Well, do you mean to say that, you a partner of Judge Garrison's, knowing the situation here, that you were indifferent? A. No, I don't mean to say that.

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Q. Well, I want you to tell us whether you did, or did not, want the defendant to come to the conference? A. Well, I hoped he would come, but I didn't expect that he would come.

Q. Well, that in itself indicated a bias on your part, didn't it? A. I don't think so.

Q. When you say of a person that you hope that they will come, but you don't expect them to attend doesn't that indicate a bias? A. It indicates a thought, a judgment that—

Q. Do you differentiate? Without going into
1289 dialectics do you differentiate between judgment and feeling? A. Yes, I may have a feeling, I would like to have you present somewhere, but my judgment would be that you would not be there.

Mr. Mooney: Well, I will be very careful not to receive an invitation from you. I don't know what would happen if I got one under those circumstances.

Q. The position of the Comptroller was known by you to be opposed to the interests and the wishes that you represented, was it not? I would like
1290 you to shorten this if you can? A. I cannot answer it in that broad way, Mr. Mooney. From the public announcements of the Comptroller it was known that he was opposed to an increase in the rate of fare upon the lines under the control of Judge Garrison, and therefore opposed to the interests which we represented.

Q. You were trying to get an increase of fare were you not? A. Yes.

Q. Now did you have anything to do with the calling of the conference? A. No.

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Q. Did you confer with anybody in respect to calling the conference? A. No.

Q. Did you know upon whose suggestion or how the conference was called? A. No, not other than the printed notice which I received of the conference.

Q. You say that you did not know the defendant. Did you know that the defendant was a lawyer and a member of the Bar? A. I rather think that I have heard that.

Q. You were bitterly disappointed at the result of the conference, the breaking up of the conference, were you not? A. No. 1292

Q. Weren't you bitterly disappointed? A. No.

Q. Were you disappointed at all? A. The only disappointment that I recall was the disappointment I had in the Comptroller writing such a letter.

Q. You think the United States Court is capable, don't you, of taking care of itself and its own dignity? A. Yes.

Q. Then why should you have this disappointment or this solicitude? A. I think that any responsible citizen ought to be disappointed that the City Comptroller, the Comptroller of the City of New York, should have written such a letter. 1293

Q. You have answered my question very nicely. And it did make a definite impression on your mind, in the words you have expressed? A. Yes.

Q. You were in sympathy with the prosecution of the Comptroller in this proceeding? A. Yes.

Q. Did you represent Judge Garrison when he was an arbitrator in connection with the matter of the Railway Company? A. What Railway Com pany?

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Q. Well, I don't suppose he has been an arbitrator, technically speaking, in more than one railway. It is the New York Consolidated? A. No, I was not counsel for him in such a proceeding.

Q. Do you know of his appointment by the New York Consolidated Railroad Company as an arbitrator before his appointment as Receiver?

Mr. Matthews: I object to that.
The Court: Objection sustained.
Mr. Mooney: I except.

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Q. Did you know that he was a duly designated arbitrator for the New York Consolidated Railroad Company at the very moment of his appointment as Receiver?

Mr. Matthews: I object.
The Court: Objection sustained.
Mr. Mooney: I except.

Q. Do you represent Judge Garrison as Receiver of the New York Consolidated Railway Company? A. Yes.

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Q. Have you ever had access to the original sources of information of that company? A. I have access to all sources of information the company has.

Q. Have you ever seen in the records of the company the designation of Judge Garrison as arbitrator in the matter referred to?

Mr. Matthews: Same objection.
The Court: Objection sustained.
Mr. Mooney: I except.

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Q. Outside of this paper, Exhibit 26 for Identification, have you in your possession any written offer of information? A. Yes.

Q. Please produce it. You realize, of course, that I am talking of the Comptroller. I don't want to spend any time—

The Court: The question, Mr. Owen, is limited by Mr. Mooney to the Comptroller.

The Witness: No.

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Q. You opposed the appointment of the Comptroller as co-receiver, did you? A. No.

Q. Well you were familiar with and helped in the drafting of the answer of the B. R. T. by Mr. Yeomans, didnt you? A. No.

Q. By the word "drafting" I intend to include preparation of that answer? A. Had nothing to do with it.

Q. Did you not see it before it was presented to the Court? A. My memory of the matter is, that Mr. Yeomans handed me a copy of it in the court room at the same time that he presented a copy of it for filing.

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Q. Have you any real memory on the point at all? A. Yes, I am rather clear about that.

Q. Well, do I understand you that you do say distinctly that that was the first occasion that you saw it? A. Yes, I say that definitely.

Q. You had not seen it outside of that place when it was presented to the court? A. I think not.

Q. And that you did not directly or indirectly take part in the preparation of it? A. That is true.

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Q. Nor any one under your instructions? A. That is true.

Q. Then do you wish to leave the record in this state, that you representing the one receiver of this property had no knowledge of what position was going to be taken with regard to an application for a co-receiver until you stepped into that room, that court room? A. The position going to be taken by whom?

Q. The Brooklyn Rapid Transit? A. Yes.

Q. You wish to leave the record that way? A.

1301 Yes.

Q. Now if my question to you were changed by inserting in it the words "by anyone" instead of the "Brooklyn Rapid Transit" is your answer the same? A. Please read the question.

(Question read to witness.)

Q. The question will then be in substance "Did you have any knowledge of the position to be taken by any one with respect to the appointment of a co-receiver before you stepped into the court room where the application was heard?" A. I did.

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Q. From whom? A. Judge Garrison.

Q. And from whom else? A. No one else.

Q. Did you take part in the discussion on that occasion before the court? A. I think not.

Q. Did you file any papers on that application for the appointment of a co-receiver? A. I think not.

Q. Well you know not, you know that you didn't? A. Yes, my memory is that I did not. No.

Q. You use the word "think" and that leaves the negation without any force to it? A. Well there have been about one hundred applications

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and two hundred motions in this matter, and I don't remember all of them. But my definite memory is that I did not.

Q. But our memory is sometimes spurred by the result of our labors. You don't find the work tiresome, do you? A. Sometimes quite tiresome.

Q. Now the employees of the Brooklyn Rapid Transit, were they continued by Judge Garrison?

Mr. Matthews: I object.

The Court: Objection sustained.

Mr. Mooney: I except.

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Q. I will point my question a little bit more. Were the employees—

Mr. Matthews: I object. I think the pointing of the question cannot cure the objection.

The Court: Counsel may ask the question, and might refrain from giving the reasons for asking the question.

Q. In whose physical possession have the books and records of the Brooklyn Rapid Transit Company, of which you have information, been since you have been counsel for the Receiver? 1305

Mr. Caffey: Same objection, immaterial.

The Court: Objection overruled.

Mr. Matthews: I except.

The Witness: In the possession of Mr. Abel and his assistants.

Q. What relation did Mr. Abel have to the affairs of the Company before you were appointed?

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Mr. Matthews: Same objection.

The Court: I think it is immaterial, but I will allow it.

Mr. Matthews: Exception.

The Witness: I think the comptroller, comptroller and auditor

Q. Comptroller or auditor of the Company? A. Well, I don't know his exact designation, title.

Q. And the books and records of the company have been in his physical keeping up to the present,

1307 haven't they? A. I think so.

JOHN H. SCHWARTING, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Schwarting, were you the stenographer who reported the proceedings before a Committee of the Board of Estimate and Apportionment on

1308 October 6th, 1919? A. Yes, sir.

Q. Were you present when the adjournment was taken for lunch? A. Yes.

Q. And when the session was resumed after lunch? A. Yes.

Q. What time did the session adjourn for lunch? A. My notes show they took an adjournment for lunch at about 1:25.

Q. Did they adjourn at that time to a fixed hour? A. Yes, sir, 2:30.

Q. To what hour did they adjourn? A. To 2:30.

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Q. Did they resume the session before 2:30? A. No, sir.

Q. Can you state exactly when they did resume the session? A. No, sir.

Q. State as nearly as you can? A. About three o'clock.

Mr. Matthews: That is all.

Mr. Mooney: No questions.

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FRANK N. ROBBINSON, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Matthews:

Q. Mr. Robbinson, are you connected with the Public Service Commission for the First District? A. I am Assistant Secretary of the Public Service Commission for the First District.

Q. Do you recall a conference that was held on October sixth, 1919, in the Hearing Room of the Commission? A. I do.

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Q. Did you on that date give to the press a statement on behalf of Mr. Nixon? A. I did.

Q. How many papers did you hand out that day to the press? A. I prepared about fifty or sixty copies of that. Just how many were handed out I don't know.

Q. I mean how many separate documents, not how many copies? A. Two separate documents.

Q. I show you a mimeographed document, consisting of ten sheets, and ask you if that is a copy of one of the documents handed out? A. I have

1312 not made a verbatim comparison of this copy. I assume that there are some corrections in this, and I assume that the corrections are the same in the copy which I have here.

Q. Is that the copy which you produced yesterday? A. This is the copy which I produced here yesterday together with this copy.

Q. We checked over those corrections I think, and we saw that they were the same? A. I think the corrections were made, may be two or three.

Q. What time of the day did you give them to
1313 the press as nearly as you can fix it? A. About 11:30 or 11:45.

Q. About 11:30 or 11:45? A. Yes.

Q. Had the conference adjourned at that time, or had you given it out before the final adjournment of the conference? A. Yes.

Q. Did you later in the day give out a different and later statement? A. I did.

Q. I show you sheet dated October 6th, 1919, and ask you if that is the later statement which you gave out? A. It is.

Q. At about what time of the day did you give
1314 that out? A. That was some time during the afternoon, about half-past four or five, even later.

Q. In the afternoon? A. In the afternoon.

Mr. Matthews: I ask that the first document, consisting of ten pages be marked for identification Government's Exhibit 29, and that the second document of one sheet be marked for identification Government's Exhibit 30.

Papers so marked.

Q. Was Government's Exhibit 30 for identification give out by you at the direction of Mr. Nixon?

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Mr. Mooney: Are you speaking of the earlier one only?

Mr. Matthews: No, the later one.

The Witness: I believe that he prepared that himself, or assisted in the preparation of that, suggested the subject matter, but the matter is a little hazy in my mind, but my recollection is, that was prepared more or less at his direction or suggestion.

Q. And you physically handed it to the newspaper men when it was completed? A. No, not in the sense you mean by physically. I sent my stenographer down to room 9, City Hall with the copies and he distributed them, with one or two other points, and I think one or two men called at the office for them. 1316

Q. Where was Government's Exhibit 29 for Identification distributed? A. That was handed out in two or three ways. That was handed the newspaper men who were present there at the office of the Commission that morning, and also copies were sent to room 9 of the City Hall. I distribute very largely all my matter from room 9 of the City Hall, which is the Reporters' Room. 1317

Mr. Matthews: I offer the exhibits for identification in evidence.

Mr. Mooney: Will you offer them separately?

Mr. Matthews: I offer in evidence Government's Exhibit 29 for Identification.

Mr. Mooney: I can not see its relevancy, but there is no use of making mountains of objections.

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The Court: I suppose there is a point to it.

Mr. Matthews: The only object is to make complete the record and to make clear the testimony of some of the other witnesses with respect to statements handed out by the Public Service Commission with respect to the conference. I want to make the record clear, but the statement did not include the letter of Mr. Craig and the letter from Mr. Craig was not given out by Mr. Nixon

1319

or any one connected with the Public Service Commission.

The Court: I will receive it for that purpose, and that purpose only.

Paper received in evidence and marked "Government's Exhibit 29."

Mr. Matthews: I now offer in evidence Government's Exhibit 30 for Identification. I understand it is received for the same purpose?

Mr. Mooney: We make the same objection, and the further objection that this is

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after the act or fact that is charged in the information.

The Court: Do you press that objection? I don't see that it makes any difference whether this paper is in or out.

Mr. Matthews: I think it illustrates the examination of Mr. Nixon, that he did not have a copy ofthe document when he testified he left the physical giving out of the copies after he directed their preparation to his subordinates, his secretary and others of the Commission, that Mr. Robbinson had

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charge of sending these out, and did send them out.

Mr. Mooney: I feel that I must stand upon my objection, because counsel's statement is that it is proving a negation, and in view of his statement I feel I must press my objection.

The Court: Do you object to both papers?

Mr. Mooney: I object to the one as irrelevant. I object to this on the ground that it is not in suppose of any act or fact stated in the information.

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The Court: Objection sustained as to the second paper. I will allow the first paper in merely on the point of time. That is the only thing, and perhaps also, as to the first paper, in the way of corroborating the testimony of Mr. Nixon as to not having given out this letter. Now, I don't know that it makes a particle of difference if I receive the first paper. I will receive the first paper with these strict limitations.

Mr. Matthews: I think that is all.

Mr. Mooney: To preserve our position we except to your Honor's ruling and to your qualification as well separately and to each.

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Cross Examination by Mr. Mooney:

Q. Mr. Robbinson, you have been connected with the Public Service Commission for a number of years, have you not? A. About four years, I believe four years.

Q. And Mr. Nixon was asked about the arrangement with the stenographer which antedated his coming, so I will ask you a few questions to sup-

1324 plement his testimony in that respect. There is an arrangement between the Commission and the stenographer for the transcribing either on the typewriter or in print, when large quantities are needed, of the proceedings of the sessions, is there not, and there was such an arrangement in effect in October, 1919?

Mr. Matthews: I object to the questions as containing too many different questions.

The Court: Ask what the arrangement

1325 was.

Q. What was the arrangement between the Commission and the stenographer in regard to getting out copies of the proceedings? A. I don't recall the exact terms of the contract, but my recollection is that the contract provides that the reporter has the privilege of selling copies of testimony before the Commission.

Q. And that inures to the benefit of the Commission as to all copies sold? A. It inures to the benefit of the Stenographic Fund of the Commission, not the Commission.

1326 Q. We think perhaps that is the same thing. The substance of the arrangement is, that the more copies sold the better it is for the Commission or its Stenographic Fund? A. It is better for our Stenographic Fund, yes, sir.

Q. And there is no limitation upon that, is there, that is they do not have to get your permission or Mr. Nixon's permission to give out their copies, that goes as a matter of course? A. Not for ordinary hearings. I don't know whether—I think that this stood in a little bit different position. That was not a regular hearing before the Commis-

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sion. It was a conference, and my recollection is that the stenographer called on some one—that is only recollection—and asked, owing to the semi-private nature of the conference whether he should have the privilege of selling copies of that, but what the reply was I don't know.

Q. It is a fact that there was a great demand for the copies of this proceeding? A. Without seeing the stenographer's books, I can not reply to that, Mr. Mooney. I assume they had some demand.

Q. You have spoken of a semi-private nature of the proceedings. We understand that what you 1328
would mean by that is that this was not a statutory public hearing under the laws of the State of New York. That is what you have in mind? A. It was that, and it also took into consideration the exclusion of the reporters from the room following or about following the conclusion of the statement read by Mr. Nixon, which is this Government's Exhibit 29, I think.

Q. In other words, that, which had started as a public discussion—leaving out of consideration the word "hearing," but that which had started as a public discussion, and which you felt to be such 1329
and had commenced to have reported in the press, about 11:40 or 11:45, turned thereafter into a closed conference by reason of the suggestion of some person. Is that it? A. I should not say that. I don't so understand.

Q. You had no objection in getting ahead of anybody by having Commissioner Nixon's material made public and then closing the conference? A. No. My intention was that the whole matter was to have been closed and gone into executive session.

Q. Your intention or wish must have taken

1330 wings before 11:40 or 11:45, when you gave this out to the press?

The Court: 11:30 or 11:45, he said.

A. Yes, that is right. I don't know what you mean by my wish having taken wings.

Q. Put it this way: We have all been living in this town quite a while, we know the elements of publicity. You did not want to put something over in favor of the Commissioner by having his
1331 speech given out to the press, as you did at 11:30 or 11:45, and then say a little later that the rest of you are closed off. You did not intend to use the appropriate vernacular that the Commissioner was to get a beat on the others in getting his remarks into the public press, did you? A. I should not say that, no.

Q. In other words you intended to do what was nice and fair and right, didn't you? A. You are getting me a little bit away from the exact conditions. That was not the intention. The Commissioner's statement was prepared and I was asked
1332 to have it gotten ready for distribution. It was given to me a very short time before the conference began, and I went down to my own office, had it transcribed, put on the mimeograph which took me about an hour, I think, I brought it upstairs and by that time the conference had been closed. I merely went from the conference hall out to the reporters' room and gave them the statement, copies of it.

Q. The only reason I am putting this question to you, and the only thing that has given rise to it, is an observation of your own which, if left unexplained on the record, might have an erroneous

1333

impression. You have suggested that this was possibly not a public discussion, and I am wondering why Commissioner Nixon should want to get the public ear, and that you, as a loyal aid, should want to get the public ear, the rest of the folks were going to get cut off. A. I do not know if I am sure—

Q. From the length of time that has elapsed your recollection can not yet have become dim. Isn't it very plain that when you had it mimeographed—I suppose that is mimeographed—that when the mimeograph started to strike off Exhibit 29, and 1334
when you had it in your mind to send it to the regular press room at No. 9 City Hall, you knew that this paper thus struck off on the mimeograph was the statement of the Commissioner, which he intended to read at this meeting, and you intended to have published in the public press, you must have had at that time regarded as a public hearing. Now, at that time you certainly must have regarded that as a public hearing, unless you intended to get an unfair advantage of somebody else? A. You mean at the time I handed it out?

Q. When you started to have it mimeographed 1335
you knew that you intended to hand it out? A. No, I don't think I did. I don't think it was decided then as to whether it was to be left wide open or whether it was to be closed.

Q. Well, when was it decided that it was fair on the Commission's part to give out this paper? A. You will have to ask him that.

Q. But you are the man who had what is called the release. You were the man who released it for publication, were you not? A. Yes.

Q. If it was to be released you were the man to release it? A. That is true.

1336 Q. Then that release must have come by prior understanding or instruction from someone else or mental operation or act of your own. Now, don't all these things, taken as a combination of circumstances, show definitely to your mind, and refresh your recollection of the fact that it was intended to give everything at the conference to the press unless it should be decided otherwise, and you were prepared, you had all your armor prepared and you were ready for the fray? A. With the qualification, unless it was decided otherwise, I should
1337 say "yes" with this qualification. That where there are a large number of reporters present at any conference or any hearing before the Commissioner, we do not generally give out anything about that particular hearing, but this was a special thing, a statement read by the Commissioner. It was rather more lengthy than the reporters could conveniently get and the thing was prepared in advance for convenience, I should say.

Q. It was a subject of very great public interest at the time, wasn't it? A. Yes, I think it was. I think it still is, Mr. Mooney.

1338 By the Court:

Q. Let me ask a question I am not clear about. Is this Exhibit 29 recorded in the other book?

Mr. Mooney: Yes.

Mr. Matthews: It is referred to on several pages of Exhibit B.

The Court: The reason I ask it, is that I would like to have the record note, when I was ruling on Exhibit 29 I had the impression it was some paper different from the

one contained in Exhibit B, and that is the reason I made the statements I did on receiving it in evidence in a qualified way. At the moment I did not read Exhibit 29. Now this having been made clear to me, I will receive Exhibit 29 without limitations. Of course to that you have an exception. 1339

Mr. Mooney: I do not like to take exceptions merely as a matter of form. You are still, I think, under a misapprehension as to the length and breadth and scope of this paper. The paper is really the Comissioner's prepared remarks, which he started to read, and thus became a part of Exhibit B. But, of course, you will realize that the reading of the paper which is now Exhibit 29 as a part— 1340

The Court: Exhibit 29—

Mr. Mooney: Of the actual proceedings within the four walls of the room is entirely a different situation from the giving out of a part of the proceedings to the public press. If you have that in your mind, there is nothing more to be said.

The Court: I understand that. 1341

Mr. Mooney: The Commissioner was well armed and prepared for his part of the publicity campaign, as a man should be on a great public question.

The Court: The stenographer may note that I have received Exhibit 29 without limitation or qualification.

Q. Now did the newspaper men come around there looking for copies of the Comptroller's letter

1342 as part of the stuff that they wanted to publish? A. I believe so, in fact I know so.

Q. And did you hear the expression used generally by the men crowded around your place there that they had heard that there was a hot letter from the Comptroller, and that they wanted to get a copy to put in the paper—so as to have it exact—now, is not that the substance of what they said to you? A. Yes, sir.

Q. Has it been your experience in the Public Service Commission, during the four years you
1343 have been there, that a matter which is of public interest and discussed by a number of persons invariably gets into the press sooner or later. Is that your experience, if it is a matter of public interest? A. I could not make it so broad as "invariably," generally, possibly, generally possibly.

Q. You gave no distinct or express authority for the publication of the letter, if that is what my learned friends would call it, in this printed volume, Exhibit B? A. I don't know to what you refer.

Q. I will ask you in simpler language: Did you
1344 tell the stenographer that he could or should print the Comptroller's letter of October 6th in this printed volume, Exhibit B? A. I had no conversation with him on the subject whatever.

Q. In other words, so far as you know, he did that acting upon his contract and his contractual relation to the Commission? A. I presume, because it was a part of the proceedings.

Mr. Mooney: That is all.

1345

Re-direct Examination by Mr. Matthews:

Q. You did not give the Comptroller's letter out to the newspapers that day? A. I certainly did not.

Q. Was it given out to your knowledge by any one at the Public Service Commission? A. It was not.

Q. When was this pamphlet, Defendant's Exhibit B, prepared, if you know? A. I cannot tell you definitely. I can tell you what I think, if that is permissible.

Q. What? A. I should say it would take about 1346
two days to have that printed, possibly two days and a half to have that printed and ready for distribution, it might be less than that, possibly a day or a day and a half, but I don't think you could get it ready so quickly.

Q. Is it fair, then, to assume that it was not delivered on October 6th? A. Oh, absolutely. It could not be done. I think it would be a physical impossibility.

Q. Mr. Mooney asked you some questions with respect to the contract for stenographic reports. Isn't it true that proceedings of this kind are a little 1347
out of the ordinary and are not sold as a matter of practice by the stenographer until he secures the release of some one in authority in the Commission? A. Generally I would say that he would confer with Mr. Walker on that subject, or in Mr. Walker's absence with himself.

By Mr. Mooney:

Q. We had some evidence here that the letter when it came in from the Comptroller was in a wet condition from its being copied, that it was not yet

1348 dry. Do you remember that circumstance? A. No, sir. I didn't know that the letter had arrived until, I think, the conference had started. I think the conference had started before I knew that. It is pretty far back, a little too long—

Q. Would you have to do with the making of a copy of the letter or sending the original letter of the Commissioner here to Judge Mayer? A. No.

Q. Do you know who did have? A. I assume Mr. Walker directed it. I am a little bit doubtful although my recollection is Mr. Walker was away
1349 that day, and that some one came to me and said that Judge Mayer, or some one in his office, desired a copy of that letter. Later—I am not absolutely certain about that—I am a little bit hazy about that.

Q. Do you remember Colonel Stimson taking a copy of the letter with him? A. No, sir. I didn't know anything of the sort.

Q. You don't know all the details about the letter, how it was copied or gotten out of the office? A. I don't remember any details as to how it was copied, was received, or anything of the sort.

1350 Q. My last question is as to how it left? A. No, I do not remember.

Mr. Mooney: I want, if I can, to save calling another witness, a separate witness—

Q. The contract to which we have been referring with the stenographer, is that the contract made with J. McNamara, doing business under the name of the General Shorthand Reporting Company? A. Yes.

Q. And is Mr. McNamara still the reported for the Commission? A. He is.

1351

Q. Under the contract? A .Under the contract.

Mr. Matthews: Just one moment, or two.

By Mr. Matthews:

Q. Mr. Mooney asked you about the details of letters going out of the office, and you said that you did not know anything about the details of copy going out of the office. Did you have anything to do with the release, the giving out of the copies to anyone? A. Except as I would have such relation as Assistant Secretary of the Commission to any document going out of the office of the Commission. It might go out in two ways.

1352

Q. Did you talk with anyone about giving out a copy of the letter over the telephone or otherwise? A. Yes, sir.

Q. With whom did you talk? A. I talked with someone in room 9 of the City Hall. The person I cannot now identify.

Q. Diid you call up that room on the suggestion of the Commissioner? A. No, sir; on the suggestion of one of the reporters.

1353

Q. Did you then report to the other officials of the Commission, either the Commissioner himself or some one else, the substance of the conversation you had over the telephone, at that time? A. Eventually I may have done so. I think I told the reporters.

By Mr. Mooney:

Q. He wants to know if you made any report? A. No, I made no formal report, I may have made mention of the matter later.

1354

By Mr. Matthews:

Q. How long after would it have been that you mentioned it to the Commissioner, or some other officials, some other person who attended the conference aside from the reporters? A. That is difficult to fix. I don't know, may have been fifteen minutes or may have been an hour, Mr. Matthews, I am not certain.

Q. How long after the adjournment of this conference was this telephone conversation? A. With

1355 room 9?

Q. Yes? A. It was while the conference was in progress. It was after the reporters had been eliminated from the conference, while they were standing out in the hall waiting for the conference to adjourn. Is that an assumption?

Q. That was the assumption of my question. Your recollection then, is that it was before the conference had adjourned? A. I am positive of it.

Q. Now, for the purpose of fixing your mind on the time, Defendant's Exhibit B, page 44, says: "Whereupon at 12 o'clock noon on the 6th day of

1356 October, 1919, the hearing in the above entitled matter was adjourned." Does that assist your memory as to approximately the time of adjournment? A. I assume that is correct. That is all I know. I don't know exactly the time the conference broke up.

Q. Well, it is customary for the stenographer to indicate accurately the time of adjournment? A. It was put on the adjournment sheet and brought to the legal department as well as put in the minutes by the stenographer.

Q. Can you state approximately how long before the adjournment it was that this telephone conver-

1357

sation took place? A. No, it must have been between 11:30 and 12. The adjournment you say, was, 12 o'clock?

Q. Yes? A. It was between 11:30 and 12 o'clock, because I came upstairs with these—

By Mr. Mooney:

Q. Excuse me. Upon what do you base the assumption that it was 12 o'clock? (Mr. Mathews indicates on paper to Mr. Mooney.)

By Mr. Matthews: 1358

Q. You say you came up with the copies of Government's Exhibit 29 at 11:30? A. About 11:30.

Q. And it was between that time? A. It was after that, I think, I was told of the arrival of the letter and I went to the telephone and called up at the request of some reporter.

Q. Will state to us your corversation with room 9 of the City Hall, or the substance of it?

Objected to. 1359
Objection sustained.
Exception.

By Mr. Mooney:

Q. Mr. Robbinson, I note in this printed book, which I confess is a surprise to me, it says "Whereupon at 12 o'clock M. on the 6th day of October, 1919, the hearing in the above entitled matter was adjourned." Now, this paper starts, it says, "at 10:30 o'clock." There are only forty-four printed pages in this book. That combination of hours and

1360 pages leads me to ask you with reference to the testimony that has been given here by some of the witnesses, viz.: that after the breaking up, so to speak, there was an additional or separate conference which was prolonged for some time. It seems quite evident that it did not take from 10:30 to 12 o'clock to do the business that is stenographically reported in forty-four pages. I am asking you to tax your memory, but if you are the man who would know about that I would like to get it from you, because this question of 12 o'clock may have an
1361 important bearing? A. I don't think I knew that there was a second conference. I did not know of one. I don't recall it.

Q. Don't you remember that some people remained afterwards—Commissioner Delaney and some of the others, and that they had a talk? A. They may have, I don't recall it.

Q. You realize, I hope, that while you are on the stand you are controlled by no printed matter or material or anything else, and that you are to give your best recollection, and it does not make any difference what other people's records may be or
1362 whether it is noted in a certain department or not, you know in regard to what took place at the conference by the fact that the Commissioner had to read and did read the remarks which you handed out, and the Comptroller's letter was read and then that these remarks were made as contained in those forty-four pages, which comprise the whole of Exhibit B. Now, with these things in your mind, will you give us your best recollection, if you have a recollection, as to whether that conference took as much time as an hour and a half? A. I cannot tell you, Mr. Mooney. I wasn't there. I was downstairs when the thing started, so I don't know.

1363

By Mr. Mathews:

Q. Where were you when the conference started? A. I was downstairs getting this thing out when the conference started.

By Mr. Mooney:

Q. Will you tell us outside of the records, because the records are not infallible; will you tell us who was present on that occasion. Who would know beside the stenographer; have you some clerk or attendant or other person connected with these 1364
public hearings, who would have a real knowledge of the time when it commenced and the time when it ended? A. No, sir. I assume that an adjournmentship is also filed by the stenographer with a member of the legal department attached to the secretary's office, that is the custom, but I don't know; that would be the most accurate—

By Mr. Matthews:

Q. In connection with this question of the length of time required, I notice on pages four, five and 1365
six, there was apparently a list of appearances. Your experience is that in taking a list of appearances the stenographer in getting accurately the names of the persons represented consumes quite a little time? A. Yes, although I think in all fairness that is some times done in part at least, before the conference begins. He goes about the room and attempts to get as many as he can before the conference begins.

Q. You don't know when it began? A. No, I was not on the floor.

1366

Q. I notice at page four the statement "The Conference began at 11:40"? A. I don't know?

The Court: He does not know. Everything on that score is apparently argument.

WILLIAM A. ANDERSON, a witness called on behalf of the United States, being duly sworn, testifies as follows:

1367

Direct Examination by Mr. Matthews:

Q. On September 6th, 7th, 8th and 9th you were the secretary of Job. E. Hedges, Receiver of the New York Railways? A. Yes.

Q. Did you receive some instructions from Mr. Hedges concerning the sending out of some papers, the same being Government's Exhibit 26? A. I did.

Q. I wish you to state in detail just what you did in compliance with those instructions? A. Saturday morning, September 6th, Mr. Hedges gave me

1368

some papers that he desired to have put in printed form and directed me to distribute them to each member of the Board of Estimate and Apportionment and to the Public Service Commission and the Mayor and many other civic organizations throughout the City and the State.

Q. Now state what you did? A. I got a printer and started in—

Mr. Mooney: I object to that as incompetent with respect to the defendant.

The Court: Objection overruled.

1369

Mr. Mooney: I except.

The Witness: I got in touch with the printer and gave him a draft of the stuff, and had him put it in galley form. On Saturday night, September 6th, he came to my house. I compared the proof and told him to get a lot out by Monday morning, which he did. On Monday morning I started the distribution. There were three-faced typewritten letters signed by the three receivers, Mr. Garrison, Mr. Hedges and Mr. Sheffield, as Trustee, and those I had my office boy 1370
deliver personally to the Mayor, Mr. Delaney and Mr. Nixon. Later in the day the printer began to deliver the letters and memorandum and I had my stenographer, Mr. Timmerman, prepare the envelopes for certain special people, such as the Mayor and the Commissioners and the Board of Estimate and Apportionment. I wanted to get those out first.

Q. Is Mr. Timberman, the Mr. E. L. Timberman who took the stand before in this proceeding? A. Yes. I had the law department and other people 1371
prepare me lists from which the envelopes could be addressed. I had various other departments help in addressing the envelopes. But, the Board of Estimate being an important one, and as Mr. Hedges told me specially to see that they got the memorandum early, I had gone in my own office. Mr. Timberman addressed those envelopes and handed them back to me. I looked to see that they were properly addressed and then handed the envelopes to Richard Hammand, my office boy, to enclose in the envelopes the pamphlets to be sent out.

1372 Q. When you say, "enclose in the envelopes the pamphlets to be sent out," you are referring to copies of Government's Exhibit 26 for Identification? A. Yes, and as we were all together in one office, I saw the boy enclose the copies in the envelopes which had previously been prepared by Mr. Timberman, and when the pamphlets were enclosed he sealed them and stamped then. In fact, he brought them back to me, and I took those envelopes with the pamphlets so enclosed and put them in Mr. Hedges personal office awaiting the time when I
1373 would send them with others to the post office later during the day.

Q. Do you know what later was done with them? A. I had some porters come in with large sacks—I don't think that on the first day there were so many—they had only one sack, and with an office boy from another department I sent the porters over to the Hudson Terminal Post Office, and they deposited them in the post office and brought the sacks back empty.

Q. Have you a list there of the Board of Estimate and Apportionment which you say you had
1374 Mr. Timmerman address these envelopes to? A. I have.

Q. I think that has previously been marked Government's Exihibit 5 for Identification? A. Yes.

Q. Did Mr. Timmerman hand this list back to you with the envelopes he had addressed? A. He did.

Mr. Matthews: I offer it in evidence.

Received and marked Government's Exhibit 5.

1375

Q. Did you send additional copies to the Board of Estimate and Apportionment? A. I did.

Q. When? A. As far as I recall, without looking at my papers, I think it is a week later.

Mr. Mooney: I object to further questions of this kind. I do not understand what the words "additional copies to the Board of Estimate and Apportionment" may mean in that connection, in that the expression is a series of conclusions.

Mr. Mathews: I am referring to additional copies of Government's Exhibit 26 for Identification. 1376

The Witness: Yes, I did send some.

Q. I mean in addition to those which the witness has testified were enclosed addressed to the persons named in Government's Exhibit 5 for Identification.

The Court: Exhibit 5 received in evidence now.

Mr. Mooney: I object to that.

The Court: Go ahead, Mr. Mooney.

Mr. Mooney: I understand better now. The objection is not raised at this point. 1377

The Witness: I did deliver additional copies of Exhibit 26.

Q. If necessary to refresh your recollection as to the date, refer to any papers which you have, and give me the date they were sent over? A. On September 15th.

Q. Were they accompanied by a letter? A. They were.

Q. Have you a carbon of the letter? A. I have

1378

Mr. Mathews: I ask that that letter be marked for identification.

Letter marked Government's Exhibit 31 for Identification.

Mr. Mathews: I offer it in evidence.

Mr. Mooney: The objection is that the paper is not sufficiently proven, and that it is incompetent.

By the Court:

1379 Q. As I understand you prepared that letter, of which Government's Exhibit 31 for Identification is a copy? A. Yes, sir.

Q. To whom did you deliver the letter? A. My office boy delivered the letter.

Q. To whom did you deliver it, did you personally deliver it to the person to whom that letter is addressed? A. No, sir.

The Court: I cannot take that.

By Mr. Mathews:

1380 Q. Did you deliver it to the office boy at the time you delivered the letter, the 20 copies of Government's Exhibit 26 for identification? A. I did.

Q. What was the name of the office boy? A. Richard Hammond.

Q. Do you know the name of the porter or porters to whom you delivered the mail bags containing the envelopes addressed in accordance with Government's Exhibit 5? A. Yes, I have the names in my file.

Q. Give me the names. I believe you said there was another office boy, give me his name? A.

1381

Roger Waters was the other office boy, and the porters were Frank Donahue and John Mazurski.

Q. And was this mail sent over or gotten out in the regular course of business in the office of the Receiver? A. It was a little unusual on account of its volume, but it was handled in the usual way.

Mr. Mathews: That is all.

Mr. Mooney: At this point I move to strike out the testimony of the witness with respect to the transmission of Government's Exhibit 26, on the ground that the answers disclose that the witness did not have personal knowledge of the transactions to which he testiefid regarding the mailing thereof.

1382

The Court: Let me get it clear in my mind.

By the Court:

Q. As I understand you, you saw the envelopes addressed to the various members of the Board of Estimate and Apportionment, the names appear on Government's Exhibit 5? A. I do. I examined them very carefully.

1383

Q. You saw and examined the envelopes? A. I did.

Q. And you saw that they were addressed to these eight members of the Board of Estimate and Apportionment whose names are set forth in Government's Exhibit 5? A. Yes, sir.

Q. Now, did you stamp the envelopes or was that done by somebody else? A. That was done by Richard Hammond in my presence.

Q. So that the procedure had, so far as you were concerned, to your personal knowledge, gone up to

1384 that point where there were stamped envelopes containing Exhibit 26, each of said envelopes respectively addressed to the respective members of the Board of Estimate and Apportionment whose names are set forth in Government's Exhibit 5? A. Yes.

Q. Now, after that what did you physically do? A. I took this particular batch of envelopes which you have just dsecribed and put them in Mr. Hedges personal office, which adjoins mine, and left them there until later in the day, when I saw this
1385 particular batch of envelopes put in the sack which the porters took to the post office.

Mr. Mooney: I move to strike out "which the porters took to the post office."

The Court: Which the porters carried away.

Mr. Mooney: I move to strike out "post office" here, and you strike out everything after that that he has testified to on that subject. This leaves in only that much with respect to the mailing and stops at the
1386 point where he handed it, or that the porters took the sack?

The Court . Containing the envelopes.

Mr. Mathews: Up to the time that they left his presence?

Mr. Mooney: Yes.

By Mr. Mathews:

Q. What kind of a sack was this that they went in? A. A large burlap sack.

Mr. Mathews: That is all.

Mr. Mooney: No questions.

1387

RICHARD HAMMOND, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Mathews:

Q. Richard were you an office boy in Mr. Anderson's office last September? A. Yes, sir.

Q. Do you recall filling and sealing some envelopes, Richard? A. Yes, sir.

Q. Of course you have not had much experience testifying as a witness, have you? A. No, sir, I have not.

1388

Q. I wish you would tell me just what you did with those envelopes? A. I put some circulars in—

Q. Tell me first where you got the envelopes? A. Mr. Anderson asked me to enclose some circulars in them, to stamp them and seal them and hand them back to him, which I did.

Q. You did that? A. Yes.

Q. I show you Government's Exhibit 26 for Identification, is that the circular which you used in filling these envelopes? A. Yes, sir.

Q. A circular just like that? A. Yes, sir.

1389

Q. Do you recall that particular batch of envelopes? A. Yes, sir, I do.

Q. Do you recall any persons to whom they were addressed? A. To the Board of Estimate and Apportionment.

Q. Did you seal them and stamp them separately? A. Yes, sir, I did.

Q. About how many were there in that batch? A. About eight or ten.

Q. When you got through with them to whom

1390 did you give them, what did you do with them? A. Gave them to Mr. Anderson.

Q. Do you know what happened to them after that? A. Mr. Anderson put them in Mr. Hedges office.

Q. You saw him do that? A. Yes, sir, I did.

Q. Did you see them again after that, up to the time they were put in the mail sack? A. I did.

Q. Were you there when they were put in the mail sack? A. Yes, sir, I was there.

Q. Who else was there? A. Mr. Anderson was
1391 there too and Roger Waters, I believe.

Q. Roger Waters, who is he? A. He is an office boy in the engineering department.

Q. Any body else there? A. And the stenographer, I believe, Mr. Timmerman.

Q. What kind of a sack were they put in? A. A regular mailing sack, a large burlap sack.

Q. What happened to the sack? A. Two men brought it over to the post office.

Q. Did you go over to the post office with them? A. No, sir.

The Court: Strike out the words "Two
1392 men brought them over to the post office."

By the Court:

Q. Two men took them away? A. Yes, sir.

Q. Were they a couple of porters? A. Yes, sir.

By Mr. Mathews:

Q. Did Roger go over with them? A. Yes, sir.

By the Court:

Q. Did you deliver any letters to anybody? A. Yes, sir, I did.

1393

Q. To whom did you deliver letters? A. The Mayor, Comm'ssioner Nixon and Commissioner Delaney.

Q. Did you go to the City Hall? A. Yes, sir.

Q. Do you remember what date it was? A. It was September 8th.

By Mr. Mathews:

Q. The same day you are talking about here? A. Yes, sir.

Q. Do you recall going over to the Board of Estimate and Apportionment some time later for Mr. Anderson? A. The same day? 1394

Q. No, not the same day, about a week later? A. Yes, sir; I do.

Q. Where did you go? A. I went to the Municipal Building.

Q. What did you take with you that time? A. Twenty circulars accompanied by a letter.

Q. Did you see the letter before it was sealed. Do you know what was in it? A. No, sir; I didn't see the letter.

Q. To whom did you deliver it over there? A. To the Comptroller. 1395

Mr. Mooney: I move to strike that out.

The Court: Motion granted. Strike that out.

The Witness: I delivered it to some man there.

Q. I show you Government's Exhibit 31 for Identification, and ask you whether you have ever seen that before, or the original of which that is a carbon? A. No, sir, I did not.

1396

Q. You don't recall ever seeing that? A. No, sir.

By the Court:

Q. When you got these letters which you delivered to the man in the Municipal Building were these envelopes sealed? A. Well, I only got one letter, and then I got the circulars and had a small package.

1397

Mr. Matthews: I think the witness is speaking now about the second occasion.

The Court: That is what I mean.

Q. Was the letter in an envelope? A. Yes, sir.

Q. And was the envelope sealed? A. Yes, sir.

By Mr. Matthews:

Q. Who gave you the envelope? A. Mr. Anderson.

Q. And did he give you twenty copies of the Ex-
1398 hibit 26? A. Yes, sir.

Q. And they were in envelopes? A. No, sir; they were in a package.

Q. And that is all that you knew about what was in them? A. Yes, sir.

Q. Then you delivered twenty copies of Exhibit 26, and an envelope containing some kind of a letter to a man in the Municipal Building? A. Yes, sir; I did.

Q. And what office was the man in, do you know? A. I believe in the Comptroller's office.

By the Court:

1399

Q. Was it the Comptroller's office or the Board of Estimate and Apportionment?

By Mr. Matthews:

Q. What floor did you get off? A. I believe it was the sixteenth.

Q. Did you go to the room number indicated, if there was a room number indicated on the envelope? A. It was the outside office door. I didn't go—

1400

Q. You didn't go inside the office, you left it with somebody on the outside? A. Yes, sir.

Mr. Matthews: I think that is all now.

Mr. Mooney: I wish to examine him on the voir dire as to that.

Cross Examination by Mr. Mooney:

Q. When you went with these circulars and with this package of twenty copies you went to the Municipal Building, and you went into the elevator didn't you? A. Yes, sir; I did.

1401

Q. And then you asked to get off at some floor, didn't you? A. Yes, sir; I did.

Q. Now what floor was it that you got off at? A. The sixteenth.

Q. The sixteenth? A. Yes, sir.

Q. When you got off at that floor you went to some room where there was some number on the door, or some name on the door, didn't you? A. I went to a desk that was out in the hall.

1402 Q. Was there a policeman sitting there at the desk? A. Not when I went there, no; sir.

Q. Now it appears—or at least we know, or we think we know, that is the Corporation Counsel's office? Now was that where you went? A. No, sir; it was not.

Q. Now I am trying to find out what it was? A. It was the Board of Estimate and Apportionment.

Q. I think you are mistaken, and I would like you to run over there during lunch hour. You go
1403 over to the place you were and see what was there. Because the Board of Estimate and Apportionment is not on the sixteenth floor. Now you go there during the lunch hour, to the place you were, and you come back and tell the Judge where you really went, because I don't think you will find any place marked Board of Estimate and Apportionment over there, but you go over there and come back at four o'clock. You only went to the one floor that day? A. Yes, sir.

Q. And you went right to the place you were headed for to deliver the twenty books in the pack-
1404 age, right to that place? A. Yes, sir.

Q. You didn't have to be referred around from one place to another? A. No, sir.

By Mr. Matthews:

Q. Was the envelope you had, addressed to any one? A. Yes, sir.

Q. Did it have an address on the outside of the envelope? A. Just Board of Estimate and Apportionment.

Q. You don't recall anything further, then? A. No, sir.

1405

By the Court:

Q. Did it have a room on it? A. No, sir.

By Mr. Matthews:

Q. Did you show that to anybody else over there? A. I asked the elevator starter; the man who starts the elevators.

Q. He told you where to get off? A. Yes, sir.

Q. What floor did he tell you? A. The sixteenth floor.

1406

Q. Did you get off at the floor he told you, whether it was the sixteenth or not? A. Yes, sir.

The Court: The Court stands adjourned to 4 P. M.

---

4 P. M.

Present—The Court and same counsel as before.

RICHARD HAMMOND, resumes the stand.

1407

By Mr. Matthews:

Q. Mr. Mooney asked you this morning to go over and see if you could find the room, did you go over? A. Yes, sir.

Q. Did you find it? A. Yes, sir.

Q. What is the room number? A. 1346.

Q. What floor? A. The thirteenth floor.

Q. Did you see the place where you delivered it A. Yes, sir; I did.

1408

Q. Did you see any other marks or sign? A. No, sir, I didn't, he was out at lunch.

Mr. Matthews: That is all.

Q. There was a mark on the door of the place you delivered it? A. Yes, sir.
Yes, sir, Secretary of the Board of Estimate and
Q. Did you see the man you handed it to? A. Apportionment.

1409

Mr. Matthews: I now offer in evidence Government's Exhibit 31 for identification.

Received and marked "Government's Exhibit 31."

W. G. HENDERSON, a witness called by the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Matthews:

1410

Q. Mr. Henderson, are you connected with the City News Association? A. Yes, I am the Treasurer.

Q. Have you produced some records from the New York City News Association showing the matter handled on October 6th, 1919? A. Yes, sir.

Q. I wish you would show me particularly this material of matter turned in to the office by Jerome Daly on that day respecting a letter sent by Comptroller Craig to Mr. Lewis Nixon? A. Mr. Daly was assigned to the story and covered nearly all of it from the start. As to the letter it-

1411

self which you speak of, I can give you the time that it was received by Mr. Daly at the office and brought over. Is that what you want?

Q. What I want is the time the letter arrived in your office, if you have got that. The time Daly turned it in? A. The nearest I can come to that, Mr. Matthews, is the time that the copy was given to me, to the copy desk by Mr. Daly.

Q. Can you give that time? A. Yes, sir.

Q. All right, I wish you would? A. 12:59 P. M.

Q. On October 6th, 1919? A. Yes, sir.

Q. Are you now referring to a sheet with flimsy pasted on it? A. Yes, sir. 1412

Mr. Matthews: I ask that the sheet referred to by the witness be marked for identification.

So marked.

Q. I notice that there are two succeeding sheets with flimsy, part of the same document? A. They are.

Mr. Matthews: I then ask that all three sheets be marked as one Exhibit for identification. 1413

Marked Government's Exhibit 32, for identification.

Q. Did the City News Association subsequently receive information from any of its reporters concerning the contempt proceedings? A. I am in no position to state that, Mr. Matthews.

Q. Can you tell from an examination of the records? A. You mean on the same day, I suppose?

1414

Q. Yes, on the same day? A. The same day at 2:41 P. M. Corrigan, who was in the building, sent an article over which I have here to submit to you.

Q. Referring to the two sheets of paper which I ask to be marked Government's Exhibit 33 for identification, do you submit these? A. Yes.

Mr. Matthews: I ask that these be marked Government's Exhibit 33 for identification.

1415 So marked.

Q. Did he send these over by messenger or by telephone or how? A. Let me look at the copy.

(Copy handed witness.)

The Witness: That was telephoned over from this building by Mr. Corrigan to the office.

Q. Going back a moment to Government's Exhibit 32 for identification, can you state whether or not it is the original of Mr. Daly's report or

1416 story, or whatever you may call it, his take on that particular matter? A. This is original copy that Mr. Daly brought in and pasted it up and give it to the copy desk to be written up and read there, and they in turn passed it over to the operators to be sent to the newspapers.

Q. And this time 12:59 is the time it was turned over by Mr. Daly to the copy desk? A. Yes, sir.

Q. Did they read it first and time it afterwards? A. And timed it after it was read.

Q. Does the time 12:59 indicate that it had been turned over by Mr. Daly to the copying desk, and

1417

by 12:59 it had been read over by the copy reader? A. Yes.

Q. What happened to that particular take, speaking now of Government's Exhibit 32 for identification? A. It is first read by the copy reader, it is sent then to the telegraph operators and by them to the newspapers who are our members. It is a matter of five minutes after it is received by the company before it is sent out.

Q. And did that go out on that particular day? A. Yes, sir.

1418

Mr. Matthews: I offer in evidence Govment's Exhibit 32 for identification.

Mr. Mooney: I would like on the voir dire to ask whether the witness knows who is indicated by the initials upon the corner of the paper, on the right hand corner of the paper.

The Witness: That is Le Vien, the copy reader.

Q. Well, you have no personal knowledge of this yourself, you are speaking only from your general knowledge of transactions of your company, that correct, the regular operations? A. Under these circumstances that that copy was sent out on that day, this being from the records. 1419

Q. Now, was that put there at that time according to the regular custom? A. Yes.

Q. And this Mr. Le Vien, is he alive and well? A. I saw him ten minutes ago. I think he is.

Mr. Mooney: Then I think we will object. I would not take the objection if I thought it would be embarrassing to my learned

1420 friend. I think it is not competently proved. You may have it marked for identification, as I assume that is what you want with this witness.

The Court: Mr. Henderson says Mr. Le Vien will be over here shortly.

By Mr. Matthews:

Q. I notice on the back of these sheets a time stamp—I am referring now to Government's Exhibit 32 for identification—can you tell me what
1421 that indicates, how it got there and what it means? A. That time indicates the arrival of this particular sheet of copy in the operating room. It leaves the copy desk, goes to the operators in another room and when it comes there it is timed by an automatic time stamp, which you see here, when it is received there.

Q. That is just before it is transmitted over the ticker? A. Yes, sir.

Q. Government's Exhibit 33 for identification contains also a stamp upon the corner, 2:41 P. M. and initials? A. Yes, sir.

1422 Q. Does that also refer to Mr. Le Vien? A. Yes, that is Le Vien too.

Q. Would that indicate with the other marks on the paper that the reporter in this building telephoned that to Mr. Le Vien? A. Not to Mr. Le Vien. It was telephoned to the re-write man, and after it is re-written it is turned over to Mr. Le Vien as the copy-reader—Mr. Le Vien is not a re-writer.

Q. Who was the re-write man, if you can tell? A. If you will hand me the copy I can tell you.

1423

You better let Mr. Le Vien. I don't think those are his initials. I don't recollect that.

The Court: Anything more of Mr. Henderson?

Mr. Matthews: I will offer Government's Exhibit 33 for identification in evidence just to see on what ground Mr. Mooney will object.

By Mr. Mooney:

1424

Q. This paper contains the initials, likewise, of Mr. Le Vien, does it not? A. Yes, sir.

Q. Now the legend or words "Read by" and time, which is stamped by rubber or other impression on these sheets of paper, was that intended to be practically contemporaneous or synchronous with the stamp to which you referred which is made by a cutting in of letters on the back of the paper? A. No.

Q. When I say contemporaneous I do not intend to bring it down to seconds, but it is expected to take place in the regular course within a few minutes, is it not? A. Yes, sir.

1425

Q. And it is fair to say that the stamp which is cut into the paper is a safe means to use in checking up the time filled in in both of these instances by Mr. Le Vien, as you see on the face of the paper? A. Yes, sir.

Q. And that is so all the way through the work of your service, that one ought to check up within a couple of minutes with the other? A. The perforation or the automatic stamping should follow the written time as filled in by the copy-reader, a

1426 matter of two minutes perhaps, five minutes perhaps.

Q. Will you tell us in case of dispute or mistake which of these is taken as governing in the course of your business? A. The fact that one is mechanical, that is the stamp on the back is mechanical, I would say that that would control over the written time of the copy-reader.

Mr. Mooney: I have no questions. I object to this paper upon the same grounds
1427 as I did to the other, viz: that it should be proven by the person whose name is indicated on its face, namely, by Mr. Le Vien.

The Court: Decision reserved in the matter for the time being.

GEORGE ROBERTS, a witness called in behalf of the United States, being duly sworn, testified as follows:

1428 Direct Examination by Mr. Matthews:

Q. Were you associated in 1919 with Mr. Stimson, the party who represented the New York Railways in the equity proceedings? A. I was.

Q. Did you appear from time to time on arguments of motions and application before the United States District Court prior to October 6th, 1919? A. I did.

Q. During what period did you attend such hearings and proceedings? A. I have attended such hearings and proceedings almost weekly since the

1429

appointment of my firm as counsel for the Receivers to date.

Q. Have you seen and heard the Corporation Counsel either in person or through his assistants appear before the Court and argue motions and applications? A. I have. Both the Corporation Counsel, Mr. Burr, personally and Mr. Kohler, his assistant.

Mr. Mooney: I move to strike that out, your Honor.

1430

Q. Is that during the period of time first specified, the appointment of your firm down to and including October 6th? A. It is.

By the Court:

Q. 1919?

By Mr. Matthews:

Q. 1919? A. Yes.

By the Court:

1431

Q. Will you state before which judge of the United States District Court these proceedings to which you have referred were had and before whom they were heard? A. Honorable Julius M. Mayer, United States District Judge.

Mr. Matthews: You may examine him.
Mr. Mooney: I have no questions.

1432

ROGER WATERS, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Matthews:

Q. Roger, on September 8th, 1919, were you working for the Interborough Rapid Transit Company? A. Yes, sir, in the chief engineer's office.

Q. Did you see Mr. Anderson on that day? A. Yes, sir.

Q. Did he give you some instructions? A. Yes,

1433 sir.

Q. What did he do? A. He gave me instructions to bring two porters to the Post Office, with two sacks of mail.

Q. Where did they get the mail if you saw them get it? A. From Mr. Anderson's office.

Q. Did you see them put the mail in the bags? A. No, sir, I did not see them do that.

Q. Tell me now when you left about what time of day it was, who was present when you were in Mr. Anderson's office, if you can remember? A. Well, it was about five o'clock. Mr. Anderson's

1434 office boy and Mr. Timerman was present.

By the Court:

Q. You mean the office boy? A. His stenographer, Mr. Timerman.

Q. No, what was the name of the office boy? A. The young gentlemen who was just on the stand?

Q. No, Hammond? A. Yes, sir.

By Mr. Matthews:

Q. Were there two porters there? A. Yes, sir.

Q. In addition to these other people? A. Yes, sir.

1435

Q. What kind of sacks were they? A. Two large burlap sacks.

Q. Mail bags? A. Yes, sir.

Q. Now tell me where you went with these porters? A. To the Hudson Terminal Post Office, 30 Church Street.

Q. What happened after you got down there? A. We put the mail in the window there.

Q. You saw them do that? A. Yes, sir.

Q. Both the bags? A. Yes, sir.

1436

Mr. Matthews: That is all.

Mr. Mooney: No questions.

Mr. Matthews: I now offer in evidence Exhibit 26 for identification.

Mr. Mooney: I object to it first as incompetent and we further object to it upon the ground that it is not relevant to the matters stated in the alleged contemptuous communication, nor with reference to the charge contained in the information.

The Court: Objection overruled.

Mr. Mooney: I except.

1437

Received in evidence and marked Government's Exhibit 26.

CHRISTOPHER LE VIEN, a witness called in behalf of the United States, being duly sworn, testifies as follows:

Direct Examination by Mr. Matthews:

Q. Are you connected with the New York City News Association? A. Yes, sir.

1438

Q. In what capacity? A. Day City Editor, in charge of the Day Desk and Day Copy Desk.

Q. Was that your position October 6th, 1919? A. Yes, sir.

Q. I show you Government's Exhibit 32 for identification and I call your attention to the initials "read by Le V, time 12:59 P. M." and ask you if you can identify those initials? A. I can, yes, sir.

Q. Whose handwriting is that? A. Mine.

Q. When was it made? A. The date?

1439 Q. Yes. A. October 8th.

By the Court:

Q. Look at that again. It is very light?

(Witness takes paper over to the window and examines it).

A. October 8 it is stamped, I belive.

By Mr. Matthews:

1440 Q. At any rate it was in the early part of October, 1919? A. Yes, sir.

Q. And if this stamp says October 6th, it was October 6th? A. Yes, sir.

Q. And if it says October 8th, then it was October 8th? A. Yes, sir.

Q. What time did you make those initials? A. 12:59, the time it is stated on there.

Q. 12:59 P. M.? A. Yes, sir.

Q. Where did you get those sheets, where did they come from to your desk, if you recall? A. That I could not tell you. They were either

1441

brought in by a boy or handed to me by the general manager or assistant general manager. I don't recall which.

Q. Well did you put the 12:59 on there at exactly 12:59? A. At exactly 12:59.

Q. Does that indicate the time you received the sheet or the time you completed the reading of that particular sheet? A. That indicates the time I completed the reading of this particular sheet.

Q. Did you make some marks on that sheet in addition to your initials? A. Paragraph marks. Quotation marks.

1442

Q. After you completed reading that you put the time on it? A. After I completed reading it, I put the time on it.

Q. Now referring to Government's Exhibit 32 for identification, which is the paper you have in your hand? A. Yes, sir.

Q. I notice on the second page there is also a similar initial and time and on the third page, and the time is stated as 1:00 P. M. That indicates the time you completed the reading the third page of that exhibit? A. Yes, sir. Well it would not necessarily indicate that either. It may be that I

1443

read the letter through first and then it would be pasted in form to go out. Sometimes a piece of copy and a letter will come to the desk and I or my assistant will read the letter through and then we will cut it up and paste it and put it in proper form to go out to the machine.

Q. You don't recall this particular instance whether you pasted it up or not? A. No.

Mr. Matthews: I now offer Government's Exhibit 32 for identification in evidence.

1444

(Paper handed Mr. Mooney for examination.)

(Mr. Mooney examines same.)

Mr. Mooney: I would like to examine on voir dire as to this paper, your Honor.

The Court: Certainly.

By Mr. Mooney:

Mr. Mooney: Mr. Matthews, will you now give me Government's Exhibits 6 and
1445 7, please, relating to the same subject matter.

Mr. Matthews: I hand you now Government's Exhibit 6 and Government's Exhibit 7. Government's Exhibit 7 does not appear to relate to the same matter, but it is handed to you now. I mean it does not relate to these particular exhibits.

Q. Now Exhibit 33 for identification appears to have cut in it quite plainly, has it not, October 6th? A. It looks to me like October 6th.

1446 Q. Now Government's Exhibit 32 for identification, has that stamp, which appears three times in succession, that is on the first, second and third sheets, and in each of these instances the stamp seems to be quite clearly October 8th. Does it not? A. Apparently it is.

Mr. Mooney: Now I would like to follow along the relation of a number of exhibits here and if the Court has no objection I will stand here. (By the witness.)

Mr. Matthews: I have no objection to these questions as cross examination, but I

1447

understood Mr. Mooney was to examine on the voir dire of one particular exhibit, Government's Exhibit 32 for identification.

Mr. Mooney: That is exactly what I am attempting to do. That is my examination will be confined entirely to authenticity.

Q. Keeping down to the question of authenticity. What is the relative authenticity of the papers which are marked 6 and 7, which I now show you, to those that are marked Exhibits 32 and 33 for identification—what is the relative authenticity of 1448
these two sets of papers? A. The paper marked Exhibit 6 and the paper marked Exhibit 32 are practically the same. One is the machine copy and the other is the copy from which the machine copy was written.

Q. Well, why did you have the machine copy, which is No. 6 taken off from No. 32? A. It has to go out on the machine to be distributed.

Q. So that dealing with these now on the question of authenticity only, do these Exhibits 32 and 33 represent the incoming news and do Nos. 6 and 7 represent the outgoing news? A. The outgoing 1449
news, yes, sir.

Q. Then Nos. 32 and 33 did not come in over the wire? A. No, sir. Apparently not. 32 I know did not. 33 may have—did come in over the telephone wire.

Q. Yes, I thought that was an indication of that. Will you point out what indication there is that it was sent over the telephone wire? A. The man who sent it and the man who received it.

Q. And it was sent by whom and received by

1450 whom? A. Sent by Corrigan and received by Mr. O'Sullivan.

Q. And in the same way No. 32 to which I think you have already testified, was sent by Mr. Daly, wasn't it? A. The letter was sent in by Mr. Daly, yes, sir.

Q. Now still confining ourselves to authenticity. Where have the sheets 32 and 33 been up to the time that they were handed to the District Attorney? A. I could not tell you.

Q. Well, you would have about a million tons
1451 of stuff, more or less, if you kept all your original sheets? A. Well, we would have quite a lot, but we would not have quite as much as that. We have a pretty big storeroom full of it.

Q. Can you tell me—still on the question of authenticity, I am not searching for anything more but authenticity—can you tell me of any knowledge or information you have with respect to the passing of these papers from October 6th to Octo- 8th into hands of the District Attorney? A. No, sir, I could not.

Q. I am not calling for first hand information,
1452 I am calling now for any information you have. Do you know how the District Attorney got them? A. No, sir. I haven't the slightest idea.

Q. Mr. Corrigan is in court, isn't he? A. No.

Q. O'Sullivan, he is an inside man— A. No, he is a general worker.

Q. Was he covering the United States Courts at that time or on that day? A. He evidently was not. Corrigan's initials are on the paper.

Q. I am particularly interested in the opening paragraph of this paper—on the question of authenticity—I therefore want to ask you if Mr.

1453

Corrigan is not here if you will give me any information you can as to his office whereabouts? A. At the present moment?

Q. Yes. A. No, sir, I haven't the slightest idea.

Q. Was he the regular court house man of the service at that time? A. Yes, sir.

Q. And you don't know whether he is engaged in newspaper work now in New York City? A. Certainly. He is engaged with us. I thought you meant today, this particular minute.

Q. No, not this minute, but he is still with you? A. He certainly is.

1454

Q. And is therefore accessible? A. Yes, sir.

Mr. Mooney: I object to it upon the ground that it is not sufficiently proven and not connected with the defendant.

The Court: Objection overruled.

Mr. Mooney: I except.

Mr. Matthews: I don't think thre is any possibility of a mistake about the dates of these two papers. Do you question my reading of the date on the back of these sheets? I read October 6th.

1455

Mr. Mooney: You mean on both?

Mr. Matthews: Yes.

Mr. Mooney: I dislike to have you put it that way. Because I don't like to disagree about your reading of anything. But it did make a distinct impression on my mind that one was the Eighth and the other the Sixth.

Mr. Matthews: There is the Sixth.

The Court: I don't think we need spend any time on that.

1456

By the Court:

Q. Mr. Le Vien, referring to these exhibits, Government's Exhibit 32 and 33 for Identification, in the regular course of business these exhibits would be made up at the time the news came in, wouldn't they? A. Yes, sir.

Mr. Matthews: As a matter of fact this is the news as it comes in.

Mr. Mooney: Let it appear this way on

1457

the record and it will serve your purpose. I don't dispute the fact because it is a matter of impression, that would serve your purpose. In other words I don't want to foreclose the defendant if he has got somebody who has got better eyes than I have.

The Court: That is all you want with Mr. Le Vien?

Mr. Mooney: That is all.

Mr. Matthews: That is all for this witness.

Mr. Matthews: Now I ask to have marked

1458

in evidence, if it does not now constitute a part of the record and the Government's bill of particulars in this case—

Mr. Mooney: I am not quite familiar with that practice, but of course the bill of particulars is one of the papers in the case, but I do not understand that the offer imparts to it any greater verity that it is a paper in the case.

The Court: Quite so. The records will show that the request was granted under that condition.

Mr. Matthews: I now offer in evidence the bill of complaint and answer in the case of Westinghouse Electric Manufacturing Company, plaintiff against Brooklyn Rapid Transit Company, New York Municipal Railways Company and New York Consolidated Railway Company, defendants, in equity docket No. E 15347. 1459

Mr. Mooney: We object, that this is not competent evidence as against the defendant, and it might be saving time and be of use for me now to state very briefly what the position of the defendant is with respect to this matter. We realize of course that there must be evidence that a cause was pending in this court, in fact that there were three causes before the Court; we realize that there must be evidence with respect to these proceedings, so as to give a foundation for the allegations of the information and pertinency to the alleged contemptuous communication. But we object, nevertheless, to these papers and the contents thereof, separately and distinctly, on the ground that they are not evidence as against the defendant; in that they were neither served upon nor brought to his attention and that he is not connected with or chargeable with the contents thereof, nor bound by law nor in fact to have knowledge of their contents or to be charged with the consequences of a neglect to read or digest their contents. There is no obligation, that we are aware of, that requires a person to read such papers at his peril; and there is no element of negligence involved in the matter of contempt. It is not my intention to make an argument, but 1460 1461

1462 I think I have outlined my objection and I do so by stating specifically that these are incompetent against the defendant and are not connected with him and if we may, we would make a like objection and reserve an exception if they were admitted, or other papers are admitted. This is in the view and hope of economy of time. Of course that imports that they will be offered separately so that they can be separately considered. We can move more rapidly in view of my statement to the Court.

1463 The Court: The Court overrules the objection. The District Attorney will offer the papers separately so that they may be clearly identified; and the Court will rule now merely so that counsel for the defense may take an exception to each and every ruling.

Mr. Mooney: We now except to the admission of each and every paper to be offered under this ruling.

Mr. Matthews: The paper which has just been offered is endorsed, in addition to the title which I have already read "Bill of Complaint," and is dated December 31st, 1918,

1464 and contains the notation: Filed December 31st, 1918, at 6:40 P. M., J. M. M., D. J.

The Court: Where is that?

Mr. Matthews: I am using the printed record. It is understood that these records offered came to me as they are, the originals were physically here in court. I am using the printed record, page 24.

Received and marked "Government's Exhibit 34."

Mr. Matthews: I now offer the answer in the suit of the Westinghouse Electric Manu-

facturing Company, plaintiff, against the 1465
Brooklyn Rapid Transit Company, The New York Municipal Railways Company, New York Consolidated Railroad Company, in equity E 15347, dated December 31st, 1918, and endorsed, "Answer" filed December 31st, 1918, at page 6:40 P. M., J. M. M., D. J.

Received in evidence and marked "Government's Exhibit 35."

Mr. Matthews: I likewise offer the order appointing Receiver, that being the order appointing Lindley M. Garrison, as temporary receiver, in the proceedings, the title of 1466
which I have already read, and the docket number of which is the same.

Received in evidence and marked "Government's Exhibit 36."

Mr. Matthews: Government's Exhibit 36, that order being endorsed filed December 31st, 1918, at 3:40 P. M., J. M. M., D. J.

I also offer the Receiver's bond, entitled in the same proceeding, same docket number, dated December 31st, 1918.

Received and marked "Government's Exhibit 37."

Mr. Matthews: Next I offer the petition 1467
of Public Service Commission entitled and docketed as indicated consisting of notice dated January 12th, 1919, and petition signed by Godfrey Goldmark, Solicitor for the Petitioner, the Public Service Commission, First District, William M. Ransom, of Counsel for the petitioner and the petition itself entitled as indicated with the same docket number, the petition being dated January 12th, 1919, and sworn to by Travis H. Whitney.

1468 Received in evidence and marked "Government's Exhibit 38."

Mr. Matthews: It is understood that Exhibit 38 is the number to applyy both to the notice and to the petition itself.

The report of the temporary receiver submitted January 15th, 1919, I likewise offer. It is entitled in the same suit; same docket number. It is signed Lindley M. Garrison, temporary receiver, and is dated January 14th, 1919.

Received in evidence and marked "Gov-
1469 ernment's Exhibit 39."

Mr. Matthews: And the offer includes all the schedules annexed to the report.

I likewise offer exhibit to the Public Service Commission similarily entitled and numbered, signed by George D. Yeomans, and sworn to by T. S. Williams, January 15th, 1919, also sworn to by C. D. Meneeley, on January 15th, 1919.

Received and marked "Government's Exhibit 40."

Mr. Matthews: I likewise offer the affi-
1470 davit of the Corporation Counsel of the City of New York, entitled and numbered similarly, signed William P. Burr, January 15th, 1919, together with the exhibits annexed to the affidavit, being Exhibits A, B, C and D.

Received and marked "Government's Exhibit 41."

Mr. Matthews: I likewise offer the opinion of Mayer, J., making the receivership permanent and denying motion for a co-receiver.

Mr. Wolbarst: What is the date of that?

Mr. Matthews: It is not dated in this

record, but my understanding is that the opinion was delivered on January 15th. 1471

Received and marked "Government's Exhibit 42."

Mr. Matthews: I likewise offer notice and order continuing receivership during pendency of suit, entitled and docketed the same as bill, dated January 22nd, 1919. That offer includes both notices of that day, signed Walter F. Butler and order of that date, signed Julius M. Mayer, U. S. Judge.

Received and marked "Government's Exhibit 43."

Mr. Matthews: I likewise offer the petition of the receiver for authority to print record, similarly entitled and numbered, dated January 22nd, 1919, the offer including the notice of motion and petition, both bearing the same date, January 22nd, 1919. 1472

Received and marked "Government's Exhibit 44."

Mr. Matthews: I now offer order authorizing receiver to print record dated January 27th, 1919, signed J. M. Mayer, U. S. D. J., similarly entitled and numbered.

Received and marked "Government's Exhibit 45." 1473

Mr. Matthews: I likewise offer application of receiver for leave to employ certified public accountants, dated January 22nd, 1919, the offer includes notice of motion and the petition, both bearing the date of January 22nd, 1919.

Received and marked "Government's Exhibit 46."

Mr. Matthews: I now offer the petition of the receiver for an order fixing the time

1474 within which to affirm or disaffirm contracts, the offer being to include the notice of motion, dated January 22nd, 1919, and the petition itself, bearing the same date.

Received and marked "Government's Exhibit 47."

Mr. Matthews: I also offer application of Receiver for instructions and for leave to borrow money and issue Receiver's certificates, similarly docketed and entitled. The offer including notice of motion and the petition, both being dated January 22nd, 1919.

1475 I am wrong about the date. The notice is January 22nd, 1919, and the petition is dated January 21st, 1919, but is verified on January 22nd, 1919.

Received and marked "Government's Exhibit 48."

Mr. Matthews: I likewise offer application of Receiver which is file No. 22, application for instructions with respect to bank loans, similarly entitled and docketed, dated January 22nd, 1919, the offer including notice of motion and also petition, both bearing date of January 22nd, 1919.

1476 Received and marked "Government's Exhibit 49."

Mr. Matthews: I likewise have to offer with respect to bank loans—

Mr. Wolbarst: That is objected to as not having been indicated in the bill of particulars.

Mr. Matthews: The offer is withdrawn then, if it does not appear in the bill of particulars, for the present.

I offer the order respecting the submis- 1477
sion of the report of the receiver, file No. 23, entitled and numbered as indicated with respect to the bill, the offer including notice dated January 30th, 1919, and the order being dated February 1, 1919.

Received and marked "Government's Exhibit 50."

Mr. Matthews: File No. 24, I offer, being an order authorizing the receiver to employ certified public accountants entitled and numbered as indicated with respect to the bill. I offer both the notice of settlement 1478
dated January 30th, 1919, and the order itself, dated February 1, 1919.

Received and marked "Government's Exhibit 51."

Mr. Matthews: I now offer File No. 26, being order giving the receiver time within which to affirm the contracts. The order includes notice of settlement, dated January 30th, 1919, and the order itself, dated February 1, 1919.

Received and marked "Government's Exhibit 52."

Mr. Matthews: I likewise offer File No. 1479
27, order authorizing receiver to borrow money, that including both the notice of settlement, dated January 30th, 1919, and the order itself, dated February 1, 1919.

Received and marked "Government's Exhibit 53."

Mr. Matthews: I likewise offer File No. 28, that being the opinion of Mayer, J., in reference to appointing Special Master, dated February 3, 1919.

1480 Received and marked "Government's Exhibit 54."

Mr. Matthews: I offer File No. 38, petition No. 1 of Central Union Trust Company for leave to file a bill of complaint and affidavit, entitled as already indicated and with the addition of this title "In the Matter of the petition of Central Union Trust Company of New York, petition No. 1," the petition being verified on February 5th, 1919.

Received and marked "Government's Exhibit 55."

1481 Mr. Matthews: I now offer File No. 39, order granting petition No. 1 of Central Union Trust Company, for leave to file bill of complaint and affidavit, entitled in the suit already indicated with the additional title indicated with respect to petition No. 1, file No. 38, Exhibit 55.

Received and marked "Government's Exhibit 56."

Mr. Matthews: Government's Exhibit 56 includes a notice of entry of the order dated February 20th, 1919, and the order itself, dated February 20th, 1919.

1482 I now offer petition No. 2 of Central Union Trust Company for leave to file a bill of complaint verified February 5th, 1919, entitled in the suit already indicated, with the sub-title in the suit with respect to petition No. 1.

Received and marked "Government's Exhibit 57."

Mr. Matthews: I now offer File No. 41, being order granting petition No. 2 of Central Union Trust Company for leave to

file bill of complaint, being entitled as is entitled petition No. 2, the offer including the notice of entry dated February 20th, 1920, and the order itself, dated February 20th, 1919. 1483

Received and marked "Government's Exhibit 58."

Mr. Matthews: I now offer File No. 44, application of New York, Brooklyn and Manhattan Beach Railway Company for leave to sue the receiver.

Mr. Wolbarst: The same file, No. 42?

Mr. Matthews: That includes the notice of motion dated February 14th, 1919, and petition verified February 14th, 1919. I offer the whole of file No. 42. 1484

Received and marked "Government's Exhibit 59."

Mr. Matthews: I haven't finished my statement as to that. It includes a second notice of motion dated February 14th, 1919, and the notation in the petition verified February 14th, 1919, by C. L. Addison.

I now offer bill of complaint of Central Union Trust Company of New York against New York Municipal Railways Company, New York Consolidated Railroad Company, and Brooklyn Rapid Transit Company, this coming in file No. is found at page 529 of volume 1 of the Brooklyn Rapid Transit Receivership proceeding. The bill is entitled : Central Union Trust Company, plaintiff, against The New York Municipal Railways Corporation, New York Consolidated Railroad Company and Brooklyn Rapid Transit Company, defendants, bill of complaint in equity E15391, and verified by 1485

1486 E. Francis Hyde on February 5th, 1919, endorsed bill of complaint, U. S. District Court, filed March 1, 1919.

Received and marked "Government's Exhibit 60."

Mr. Matthews: The offer includes the bill and the exhibit down to and including page 894 of the printed record.

I now offer bill of complaint of Central Union Trust Company against Brooklyn Rapid Transit Company, being entitled the Central Union Trust Company of New York,
1487 plaintiff against Brooklyn Rapid Transit Company, defendant, and endorsed bill of complaint in equity E15392 and verified on February 5th, 1919, by E. Francis Hyde, endorsed U. S. District Court, filed March 1, 1919.

Received and marked "Government's Exhibit 61."

Mr. Matthews: That offer likewise includes the exhibits annexed to the bill of complaint and includes pages 895 to 1072, inclusive, of the printed record.

1488 It is now six o'clock and we have only finished offering one volume of Brooklyn Rapid Transit receivership proceedings and we have yet to finish the second volume and part of the third, and four volumes of the New York Railways not to mention the bankruptcy proceedings.

The Court: Let me suggest this: We will adjourn as stated this morning to the 8th of June at 10:30. Now, would it be practical between now and then to make up a list of the papers and let Mr. Mooney have that?

Mr. Matthews: I expect to follow closely my bill of particulars. 1489

The Court: We will now adjourn until the 8th day of June, 1919, at this room.

Adjourned to June 8th, 1920, at 10:30 A. M.

New York, June 8, 1920, 10:30 A. M.

Present—Judge JULIUS M. MAYER on the Bench.

Same counsel as before. 1490

Mr. Mooney: I presume the record will represent our meeting as heretofore, present the same counsel as before.

Mr. Matthews: In a preliminary way I would like to call attention to what appear to be obvious errors in the stenographic minutes at the last hearing. I refer first to page 447, first line at the top of that page "I show you Government's Exhibit 20 for identification" that should be "Government's Exhibit 26 for identification"; and I would like to have the reporter change it to 26.

Also on page 441 about the middle of the page there is "Answer, on December 5th.' That answer as actually made was "On September 15th." That is made clear by reference to the exhibit about which the witness was being questioned, Exhibit 26, which is dated September 15th. 1491

There is another matter that is not entirely clear, not covered, and I ask to have it made clear; Exhibits 32 and 33 for identification were offered and received in evidence, and while the contents of the record so show, there is nothing to indicate in the

1492 stenographer's minutes the point at which they were actually received in evidence. My recollection is that the clerk merely took the exhibits, crossed off the identification mark, leaving them marked Exhibits 32 and 33. I merely mention that so that the record may be clear.

Mr. Mooney: I assume the corrections should be made as indicated by Mr. Matthews. I have not had an opportunity to go over the minutes myself to observe whether further corrections should be made, but we will do that later.

Mr. Matthews: This is the first time I have
1493 called attention to the errors in the minutes, heretofore those that have been noted were of minor importance, but I think they have been corrected in pencil on both sides. If there should be any dispute about that we can check it up with the stenographer's minutes and there having been two stenographers present, we should not have any trouble in arriving at just what was said and done.

Before we proceed with the exhibits contained in the records referred to at the last hearing I offer in evidence the roll of attorneys of the Circuit Court of the United States, showing the admission
1494 to the Bar of this Court on April 21st, 1906, of Charles Lacey Craig, 22 William Street, address given at that time, April 12, 1906. If there is no objection I will merely read this entry, without having the record marked in evidence, and it can be known as Government Exhibit 62.

Considered as Government's Exhibit 62.

Mr. Mooney: So it will be known as Exhibit 62?

Mr. Matthews: Considered and known as Government's Exhibit 62.

Mr. Matthews: Roll of Attorneys U. S. Circuit Court, "Dated: April 21, 1906; Signature: Charles

Lacey Craig, 22 William Street; On whose motion: 1495
John A. Shields; By whom sworn: J. A. S. Paid," indicating that the fee for admission to the Bar was paid, and the initials J. A. S., being the designation of Mr. Shields, who at that time was Clerk of the Court.

I now offer File No. 51, Order granting motion of New York, Brooklyn and Manhattan Beach Railway for leave to sue the Receiver, which is found at page 1—a copy of which is found at page 1, volume 2, of the record, Proceedings of Brooklyn Rapid Transit Receivership, which Order is dated February 28th, 1919, and is signed John C. Knox, 1496
United States Judge.

Received in evidence and marked Government's Exhibit 63.

Mr. Matthews: I likewise offer File 52, page 3—and these pages until further indicated will refer to volume 2, just mentioned,—Order directing the Receiver not to pay any interest on the bank loans, dated March 10th, 1919, signed Julius M. Mayer, D. J.

Received in evidence and marked Government's Exhibit 64.

Mr. Matthews: I now offer File 53, a copy of 1497
which is found on page 5, application of Receiver to have matter of payment of interest on Brooklyn Rapid Transit Company first mortgage bonds referred to Special Master. This it dated March 7th, 1919.

Received in evidence as Government's Exhibit 65.

Mr. Matthews: I now offer File 64, copy of which is found on page 8, being the order referring the payment of interest on Broklyn Rapid Transit first

1498 mortgage bonds to Special Master, dated March 11th, 1919.

Received as Government's Exhibit 66.

Mr. Matthews: I now offer File No. 56, copy of which is found at page 21, being the report of Special Master in re issue of Receiver's Certificate, dated March 17th, 1919.

Received as Government Exhibit 67.

Mr. Matthews: I likewise offer File No. 57, copy of which is found at page 40, being Application of Receiver arising out of pledges of Brookln Rapid Transit bonds.

1499 Received as Government Exhibit 68.

Mr. Matthews: That offer includes a notice of motion dated March 17th, 1919, with the application itself of the same date.

I now offer File No. 62, copy of which is found at page 165, preliminary report of Special Master in re payment of interest on first mortgage bonds, that is dated March 26th, 1919.

Received as Government's Exhibit 69.

Mr. Matthews: I now offer File 68, copy of which is found at page 190, Petition of Receiver for instructions prior to the report of Special
1500 Master, in re advisibility of paying interest on mortgage bonds.

Received as Government's Exhibit 70.

Mr. Mattews: We offer to include Notice of Motion dated March 26th, and the Petition itself of the same date.

I now offer File 69, Order approving the preliminary report of the Special Master in re payment of interest upon mortgage bonds, copy of which is found at page 196, that is dated March 29th, 1919.

Received as Government's Exhibit 71.

Mr. Matthews: I likewise offer File No. 71, copy 1501
of which is found on page 201, being Order extending time for filing claims, dated March 29th, 1919.

Received as Government's Exhibit 72.

Mr. Matthews: I now offer File No. 76, being Petition of Receiver requesting employment of Carl M. Owen as solicitor and attorney for the Receiver.

Received as Government's Exhibit No. 73.

Mr. Matthews: Which is dated April 4th, 1919.

I now offer File 77, copy of which is found at page 224, Order of April 4th, 1919, authorizing employing of Cram M. Owen as solicitor and attorney for the Receiver.

Received as Government's Exhibit 74. 1502

Mr. Matthews: I now offer File 79, page 228, Opinion of Mayer, J., approving Report of Special Master in re award of War Department for dock property.

Received as Government's Exhibit 75.

Mr. Matthews: That is dated April 7th, 1919.

I now offer File 83, Application in re Crenshaw Construction Company contract, page 248, dated April 5th, 1919.

Received as Government's Exhibit 76.

Mr. Caffey: I now offer File No. 84, Order ap- 1503
proving action of Receiver as Receiver of New York Municipal Railway Corporation in taking over the work from Crenshaw Construction Company, page 257, dated April 8th, 1919.

Received as Government's Exhibit 77.

Mr. Caffey: I now offer Petition of Central Union Trust Company to consolidate causes and extending receivership, at page 272, dated April 11th, 1919, and apparently without file number.

Received as Government's Exhibit 78.

1504 Mr. Caffey: That includes the notice accompanying petition.

I next offer Order consolidating causes and extending receivership, page 278, dated April 21st, 1919, together with the notice accompanying, there is apparently no file number.

Received as Government's Exhibit 79.

Mr. Caffey: I now offer Order consolidating causes and extending receivership dated April 21st, 1919, together with notice accompanying it, at page 283, without file number.

Received as Government's Exhibit 80.

1505 Mr. Caffey: I now offer File No. 85, Order granting Equitable Trust Company leave to intervene against execution of order in the matter of the award of the War Department on dock property dated April 28th, 1919, together with notice accompanying it, page 297.

Marked as Government's Exhibit 81.

Mr. Caffey: I now offer File No. 86, Order extending time for presenting claims of the City of New York and the Public Service Commission for the First District, dated April 29th, 1919, at page 301.

1506 Received as Government's Exhibit No. 82.

Mr. Caffey: I now offer File No. 87, Order extending time for presenting claims to June 2nd, 1919, dated May 1st, 1919, at page 303.

Received as Government's Exhibit No. 83.

Mr. Matthews: I now offer File No. 88, copy found at page 305, Affidavit of Publication of Notice in re extension of time for presenting claims, dated March 31st, 1919.

Received in evidence as Government's Exhibit 84.

Mr. Matthews: I likewise offer File No. 89, copy

to be found at page 308, Order extending time of Brooklyn Rapid Transit Company to answer to June 19th, 1919, dated May 12th, 1919. 1507

Received as Government's Exhibit No. 85.

Mr. Matthews: I now offer File No. 90, copy at page 310, being Order dated May 12th, 1919, extending time of New York Municipal Railway Company, New York Consolidated Railroad Company and Brooklyn Rapid Transit Company to answer to June 19, 1919.

Received as Government's Exhibit No. 86.

Mr. Matthews: I now offer File No. 115, at page 389, being an application with respect to confirmation of contract No. 4, the offer including not only the application, but also the notice of motion dated May 9th, 1919. 1508

Received as Government's Exhibit 87.

Mr. Matthews: I now offer File No. 116, copy to be found at page 397, application for authority to issue receivers' certificates, the offer includes not only the application, but also the Notice of Motion, dated May 9th, 1919.

Received as Government's Exhibit No. 88.

Mr. Matthews: Likewise File No. 92, copy to be found on page 420, being application of receiver to have matter of payment of interest on Brooklyn Rapid Transit first refunding gold mortgage bonds referred to Special Master. The date of that is May 21st, 1919. 1509

Received as Government's Exhibit No. 89.

Mr. Matthews: I now offer File No.93, page 423, being Order referring matter of payment of interest on Brooklyn Rapid Transit first refunding gold mortgage bonds to Special Master.

Received as Government's Exhibit No. 90.

Mr. Matthews: I likewise offer File No. 94, on

1510 page 497, being Affidavit of Corporation Counsel upon the application for authority to issue receivers' certificates, that affidavit being dated May 22nd, 1919.

Received as Government's Exhibit No. 91.

Mr. Matthews: I likewise offer File No. 95, copy found at page 436, being exceptions of Central Union Trust Company of New York as trustee, etc., to the report of the Special Master, dated May 22nd, 1919.

Received as Government's Exhibit No. 92.

Mr. Matthews: I now offer File No. 96, copy at
1511 page 441, Decree providing for the issue of receivers' certificates, together with Notice of Entry. The decree is dated May 29th, 1919.

Received as Government's Exhibit No. 93.

Mr. Matthews: I now offer as portion of the same file number, at page 473, Order for Sale of receiver's certificates, dated May 29th, 1919.

Received as Government's Exhibit No. 94.

Mr. Matthews: I now offer File No. 97, copy found at page 478, Opinion of Mayer, J., in re issue of receiver's certificates, dated May 29th, 1919.

Received as Government's Exhibit No. 95.

1512 Mr. Matthews: I now offer File No. 104, copy to be found at page 495, being Petition approving the B. R. T. agreement with respect to Brooklyn Heights Railroad Company, the offer including Notice of Motion and the Petition itself, dated June 5th, 1919.

Received as Government's Exhibit No. 96.

Mr. Matthews: I likewise offer File No. 119, copy found at page 572, Order dated June 18th, 1919, extending the time of the New York Municipal Corporation, New York Consolidated Railroad Company and Brooklyn Rapid Transit Company to answer to July 21, 1919.

Received as Government's Exhibit No. 97. 1513

Mr. Matthews: Next I offer File No. 120, page 575, Affidavit of the Corporation Counsel in opposition to application of the Receiver for authority to exchange properties of Brooklyn City Railroad Company, the same being being dated June 11th, 1919.

Received as Government's Exhibit No. 98.

Mr. Matthews: I next offer File No. 123, page 4, Report of the Special Master in re payment of interest on first mortgage bonds, dated June 26th, 1919.

Received as Government's Exhibit No. 99. 1514

Mr. Matthews: I also offer File No. 124, page 587, Application of Receiver for instructions,—with respect to instructions for preserving the corporate existence of defendants, that offer includes notice of motion dated June 26th, 1919, and the application itself.

Received as Government's Exhibit No. 100.

Mr. Matthews: I offer File No. 125, page 593, Order dated June 27th, 1919, authorizing receiver to make expenditures preserving corporate existance of defendant companies.

Received as Government's Exhibit No. 101.

Mr. Matthews: I offer File No. 126, copy page 595, application of receiver for confirmation of Special Master's report, repayment of interest, page 595, dated June 26th, 1919. The offer includes Notice of Motion as well as Application. 1515

Received as Government's Exhibit No. 102.

Mr. Matthews: I also offer File No. 127, page 601, Order dated June 27th, directing receiver to pay no interest on first and refunding gold mortgage bonds of Brooklyn Rapid Transit Company.

Received as Government's Exhibit No. 103.

1516 Mr. Matthews: I likewise offer File No. 128, page 603, Application of Receiver for time within which to affirm or disaffirm contracts. The offer includes Notice of Motion dated June 26th, 1919, as well as application.

Received as Government's Exhibit No. 104.

Mr. Matthews: Likewise I offer File No. 129, page 610, Order dated June 27th, 1919, extending time within which to affirm or disaffirm contracts to December 31st, 1919.

Received as Government's Exhibit 105.

Mr. Matthews: Also I offer File No. 130, page
1517 612, Application of Receiver for confirmation of Special Master's report in repayment of interest on mortgage bonds, etc.; that offer includes not only application, but also Notice of Motion dated June 26th, 1919.

Received as Government's Exhibit No. 106.

Mr. Matthews: I now offer File No. 131, page 619, Order dated June 27th, 1919, confirming the Special Master's report and directing the receiver to pay no interest, etc.

Received as Government's Exhibit No. 107.

Mr. Matthews: I now offer Opinion of Circuit
1518 Court of Appeals in the matter of receivers certificate, page 624.

Received in evidence as Government's Exhibit 108.

Mr. Matthews: For the sake of convenience I suggest that we mark in our copies of Volume 2, No. 198, page 977, Opinion of Mayer, J., in re report of Stone & Webster, as Exhibit 26, which has heretofore been offered and received in evidence as that exhibit. This is merely a copy of it in the printed record of the proceedings at page 977.

At this point I would like to suspend the offering of these exhibits and call Mr. Halloran.

1519

WILLIAM F. HALLORAN, JR., a witnss called in behalf of the United States, being duly sworn, testified as follows.

Direct Examination by Mr. Matthews:

Q. Mr. Halloran what is your business? A. I am a lawyer, managing clerk in the office of Winthrop & Stimson.

Q. How long have you been such? A. About three years.

Q. You have then been their managing clerk during all the time they represented the receiver in the New York Railway matters? A. Yes, I have. 1520

Q. Are you familiar with the service of papers and proceedings that have taken place from that office in that case? A. I am.

Q. Did you receive service of papers served upon them as counsel for Job E. Hedges, receiver of the New York Consolidated Railways Company? A. I did.

Q. Have you custody of the filing of all these legal papers, including all papers in these proceedings? A. Yes, I have.

Q. Do you also keep the correspondence in connection with the receivership? A. Yes, sir. 1521

Q. Were the proceedings in the New York Railway matter printed? A. They were, yes, sir.

Q. Were printed copies of the proceedings served on the Corporation Counsel? A. They were.

Q. Several of them? A. They were, yes sir.

Mr. Mooney: Now as to that I object, as heretofore, upon the ground that the papers sent to the Corporation Counsel are not binding upon the Comptroller, as the Cor-

1522

poration Counsel in no sense represents the Comptroller either in law or in fact.

The Witness: Yes.

Mr. Mooney: My motion will be to strike out the answer as well as to object to the question, the answer having been given before I could put my objection on the record.

Q. I wish you would state, Mr. Halloran what parts of the printed record were furnished by your office to the Corporation Counsel. Please state the

1523 dates they were so furnished.

Mr. Mooney: Same objection.

Examination of Mr. Halloran suspended.

Mr. Matthews: I now offer in evidence the following papers from the files of the Court in the suit entitled "The American Brake Shoe & Foundry Company, complainant, against the New York Railways Company, defendant, the Farmers Loan & Trust Company, trustee, complainant, against the New York Railways Company, Job E. Hedges, as Receiver, of the said railway

1524 company, and the American Brake Shoe & Foundry Company, defendant, which is now docketed as Equity Consolidated Cause E. Consolidated 16/151." The papers now offered will be referred to by page number of volume 1, part 1 of the receivership records, which contain copies of the papers to be offered.

Page 1, I offer the Bill of Complaint verified on March 20th, 1919, in the action of the American Brake Shoe & Foundry Com-

1525

pany against New York Consolidated Railway Company.

Received as Government's Exhibit No. 109.

Mr. Matthews: Likewise page 15, the answer verified March 20th, 1919, in the same suit.

Received as Government's Exhibit No. 110.

Mr. Matthews: Page 18, Order appointing temporary receiver dated March 20th, 1919.

1526

Received as Government's Exhibit No. 111.

Mr. Matthews: Page 23 receiver's bond dated March 20th, 1919.

Received as Government's Exhibit No. 112.

Mr. Matthews: Page 26, Minutes on Return of Order to Show Cause why Receivership should not be continued, dated March 31st, 1919.

Received as Government's Exhibit No. 113.

1527

Mr. Matthews: Page 44, Affidavit of Corporation Counsel dated March 31, 1919, that offer includes Exhibit A at page 79.

Received as Government's Exhibit 114.

Mr. Matthews: Also page 106, which is Exhibit B, and page 109, which is Exhibit C, are offered as part of Exhibit 114.

I offer at page 114 Petition of the National Surety Company, dated March 31st, 1919, reform of order appointing permanent receiver.

Received as Government's Exhibit No. 115.

1528

WILLIAM F. HALLORAN (resumes the stand).

Direct Examination by Mr. Matthews (continued):

The Court: I overrule this objection, because reference is made in the letter complained of in the information, as I recall it, to himself and other members of the Board of Estimate and Apportionment, or words to that effect.

Mr. Mooney: He does not—that is the Corporation Counsel does not represent the

1529

Board of Estimate and Apportionment in any sense. I want to say here that the record is in this situation, as I understand it: Your Honor has repeatedly ruled with respect to a certain class of evidence that that which went to the Corporation Counsel or went to other members of the official administration of the City of New York and that to the Comptroller officially or the Board of Estimate and Apportionment as such was not "competent," and in other parts of the record, if I can read it aright,

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your Honor has admitted evidence of that kind and class. Now whether it has been that Counsel has not always been as astute and ready to raise the point on the record, I do not know, but my remarks are now made only for the purpose of bringing to your Honor's mind the objection to the point that on certain occasions you have excluded evidence of this kind.

The Court: I cannot at this moment recall the Court's ruling on each and every objection, but I can state it broadly in relation to the questions involved. As I recall I ex-

cluded all conversations with any others but the defendant, that is to say, I excluded as I recall, the effort of the Government to introduce in evidence certain correspondence with the Corporation Counsel which might or might not have represented others, by the Receivers or their counsel in respect to certain subject matter or discussions between the Receivers and their counsel or writings having to do with certain matters such as the form of the expert accountant's report and the like. But when it comes to official records of the proceedings had in these receiver's suits, and which records are filed and it is sought to question this witness to show that these records were constantly sent to the Corporation Counsel that seems to me to be entirely relevant, as showing, which I assume is the purpose of the Government, the open character and the method of procedure, under the direction of the Court, of the Receivers and their counsel.

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Now, that broadly stated, without limiting myself to anything in detail is the statement of the differentiation, which perhaps Counsel has sought to ascertain with respect to my ruling.

1533

Mr. Mooney: We content ourselves with an exception to such rulings as are contained in your Honor's remarks; and I will say only about three words and that is, in law—I am not speaking of fact—but in law these documents when they reach the Corporation Counsel are utterly inaccessible to the Comptroller of the City of New York.

1534

Q. I think the next question was this: Give the dates that the several parts of the printed records were furnished to the Corporation Counsel.

Mr. Mooney: Same objection.
The Court: Same ruling.
Mr. Mooney: I object.

A. The printed record to date contains two volumes, each containing two parts. Volume one, part one, was served on the Corporation Counsel in
1535 June, 1919, and volume one, part two, was served in July, 1919; volume two, part one, was served August, 1919. Volume two, part two, was served sometime in January of this year.

Q. I am not interested in that, what you served this year.

The Court: Strike out so much of the testimony as refers to January of this year.

Q. I show you Government's Exhibit 27 for Identification and ask you if you have the original letters that were received by your office contained
1536 in that exhibit and also your office carbons of those that went out from your office? A. I have, yes, sir.

Q. Did they come in and go out in the regular course of business? A. They did.

Mr. Matthews: I offer then Government's Exhibit No. 27 for Identification in evidence, exhibiting the original papers to defendant's counsel, and I would like to have the copies marked in place of the originals, unless there is some point in having the originals. My desire is that the originals be returned to the files.

1537

Mr. Mooney: We make an objection to each and every of the papers offered in evidence upon the ground that none of them is addressed to, nor so far as appears was delivered to, or brought to the attention of the defendant in this case and therefore that they are incompetent and improper as against him.

The Court: Objection sustained.

Mr. Matthews: May the copies be marked with the same force and effect as if they were the originals?

1538

The Court: Yes, certainly.

Mr. Matthews: I would like to have these made a part of the record. I am not trying to connect the defendant with these, but I think we ought to show on the record what the fact is with respect to this Stone and Webster matter, which was a matter of record, and that the defendant with reasonable diligence could have found out just what the situation was, one of the charges in the information being that the statement made in this regard was in disregard of the truth.

1539

The Court: Objection sustained.

Q. Did you have charge of serving the Corporation Counsel with notices, pleadings and motions in the receivership? A. I did.

Mr. Mooney: Same objection.

The Court: Objection overruled.

Mr. Mooney: Exception.

Q. And did you cause the Corporation Counsel to be served with pleadings, notices, orders and the like?

1540

Mr. Mooney: Same objection.
The Court: Objection overruled.
Mr. Mooney: I except.

A. I did.

Cross Examination by Mr. Mooney:

Q. Have you ever met Mr. James L. Quackenbush in the performance of your duties? A. Not personally.

1541

Q. Have you ever met Mr. Edward W. Sayre in the performance of your duties? A. No, sir.

Q. Or Mr. B. C. Moorehead? A. No, sir.

Mr. Matthews: The offer of Exhibit 115 includes not only the petition, but the notice thereto annexed, pages 122, Exhibit A, 123 Exhibit B, 132 Exhibit C.

I now offer Order appointing Job E. Hedges permanent receiver, copy found at page 142, the Order being dated March 31st, 1919.

Received in evidence as Government's Exhibit 116.

1542

Mr. Matthews: Counsel on both sides having printed copies of the record are requested to mark their printed copies.

I now offer extension of bond of temporary receiver to cover duties of Receiver, found at page 147.

Received in evidence as Government's Exhibit 117.

Mr. Matthews: I now offer Petition of Receiver for Order appointing Counsel, page 149, dated April 2nd, 1919.

Received in evidence as Government's Exhibit 118.

Mr. Matthews: I now offer Order ap- 1543
pointing Receiver's Counsel dated April 2nd, 1919, copy at page 151.

Received in evidence as Government's Exhibit 119.

Mr. Matthews: I offer in evidence minutes of hearing before Judge Mayer on matter of extension of bond, printing of record, petition for leave to continue certain insurance, matter of affirmance or disaffirmance of contracts, matter of presentation of claims, matter of continuation of welfare work, beginning at page 152.

Received as Government's Exhibit No. 1544
120.

Mr. Matthews: I now offer Notice of Motion for Order authorizing receiver to print receivership record, found at page 158, I offer petition verified April 21st, 1915, for Order authorizing receiver to print receivership record as a part of Exhibit 121, that is down to page 160, likewise Order authorizing receiver to print receivership record, page 162. I offer these three documents as one exhibit.

Received as Government's Exhibit 121. 1545

Mr. Matthews: I now offer Notice of Motion for Order fixing time for presentation of claim on original reports of receiver, copy found at page 185.

The offer including the Order for presentation of claims at page 187, dated April 10th, 1919.

Received in evidence as Government's Exhibit 122.

Mr. Matthews: I now offer the Order to show cause why leased lines should not be

1546 returned to the lessor, The Eighth Avenue Railroad Company, copy to be found at page 192, together with the petition on which that order was based, copy to be found at page 193, as one exhibit.

Received as Government's Exhibit 123.

Mr. Matthews: And the offer includes, of course, the exhibits annexed to the petition down to and including page 237.

I now offer the answer of the Receiver, dated April 21st, 1919, to the petition of The Eighth Avenue Railroad Company, page 238.

1547 Received as Government's Exhibit 124.

Mr. Matthews: The offer including the exhibits annexed to the answer.

I now offer the affidavit of the Corporation Counsel dated April 21st, 1919, in answer the petition of The Eighth Avenue Railroad Company, copy found at page 251.

Received as Government's Exhibit 125.

Mr. Matthews: I now offer Order to show cause why leased lines should not be returned to the lessor, The Ninth Avenue Railroad Company, copy found at page 260.

1548 Received as Government's Exhibit 126.

Mr. Matthews: That offer includes the petition on which order to show cause was based, found at page 262, with the exhibits thereto annexed, down to and including page 301, beginning at page 260 down to page 301 and ask that they be marked as one exhibit.

I now offer Answer of the Receiver, dated April 21st, 1919, to the Petition of The Ninth Avenue Railroad Company, page 302.

Received as Government's Exhibit 127.

Mr. Matthews: That offer includes the exhibits thereto annexed, page 316. 1549

I now offer the affidavit of the Corporation Counsel—

Mr. Wolbarst: I object to the inclusion in the last exhibit of Exhibits A, B and C annexed to the answer of the Receiver, pages 315 and 316, because they were not indicated in the Bill of Particulars.

Mr. Matthews: The exhibits objected to are Exhibit A, page 315, and Exhibit B on page 316. They constitute a part of and were annexed to the answer of the Receiver. The answer of the Receiver was designated in the Bill of Particulars as beginning at page 302 of the receivership record. 1550

I now offer affidavit of Corporation Counsel verified April 21st, 1919, in answer to petition of Ninth Avenue Railroad Company, page 317. That affidavit includes page 317 to page 327 and is dated April 21st, 1919.

Received in evidence as Government's Exhibit 128.

Mr. Matthews: I now offer in evidence stenographer's minutes of hearing of Eighth Avenue Railroad and Ninth Avenue Railroad petitions, beginning at page 328, and dated April 21, 1919. 1551

Received as Government's Exhibit No. 129.

Mr. Matthews: I now offer Order denying petition of Eighth Avenue Railroad Company dated April 30th, 1919, found at page 362.

Received as Government's Exhibit No. 130.

1552 Mr. Matthews: I likewise offer in evidence Order denying petition of Ninth Avenue Railroad Company, dated April 30th, 1919, found at page 363.

Received in evidence as Government's Exhibit No. 131.

Mr. Matthews: I now offer in evidence stenographer's minutes of hearing reappointment of Special Master, found at page 364, dated April 21st, 1919.

Received as Government's Exhibit No. 132.

1553 Mr. Matthews: I now offer in evidence Order appointing Special Master and providing for the proof of claims other than tort claims, found at page 368.

Received in evidence as Government's Exhibit 133.

Mr. Matthews: I now offer in evidence Petition of Receiver for leave to employ engineers and accountants to make examinations of property and finances, page 383. The date is April 25th, 1919.

Received as Government's Exhibit No. 134.

1554 Mr. Matthews: I now offer in evidence Order directing Receiver to employ engineers and accountants to make examination of the property and finances, date April 28th, 1919, page 384.

Received in evidence as Government's Exhibit 135.

Mr. Matthews: I now offer in evidence stenographer's minutes of hearing on Motion of Receiver for leave to employ engineers and accountants, etc., dated April 28th, 1919, page 386.

Received as Government's Exhibit 136.

1555 Mr. Matthews: I now offer in evidence stenographer's minutes of hearing in the matter of paving contract, matter of filing accounts of Receiver, beginning at pages 398 and 401 and following.

Received as Government's Exhibit 137.

Mr. Matthews: That will include first all the hearing on page 411 and on and will include all of those pages, I think I had better offer them consecutively down to page 413.

I now offer Petition re Broadway & Seventh Avenue Co. lease, found at page 415.

1556 Received as Government's Exhibit 138.

Mr. Matthews: I now offer in evidence Order authorizing Receiver to make certain payments with respect to Broadway & Seventh Avenue Railway Company lease, found at page 425, dated May 29th, 1919.

Received as Government's Exhibit 139.

Mr. Matthews: I now offer in evidence affidavit of Corporation Counsel, found at page 427, dated May 29th, 1919.

Received as Government's Exihibt 140.

1557 Mr. Matthews: I now offer stenographer's minutes of hearing of Matter of Municipal Ferry and proceedings filed by the Receiver in reference to 23rd Street rentals, interest payments, with the exception of contract and tort claims. This is referred to as the second hearing, particularly pages 466 and following, dated June 10th, 1919, it begins at page 464.

Received as Government's Exhibit 141.

Mr. Matthews: I now offer petition of Farmers Loan & Trust Company for leave to foreclose adjustment mortgage, page 497.

1558 Received as Government's Exhibit 142.

Mr. Matthews: I likewise offer in evidence Order granting the Farmers Loan & Trust Company leave to file bill of foreclosure, found at page 502.

Received as Government's Exhibit 143.

Mr. Matthews: Dated June 6th, 1919.

I now offer in evidence foreclosure bill, page 504.

Received as Government's Exhibit 144.

Mr. Matthews: Dated June 9th, 1919. That offer includes also Exhibit A to ad-

1559 justment mortgage on page 610 and following down through page 826.

I now offer in evidence stenographic minutes of hearing on South Ferry transfer matter, found on page 827, dated June 12th, 1919.

Received in evidence as Government's Exhibit 145.

Mr. Matthews: I now offer in evidence second petition of Eighth Avenue Railroad Company for the return of its leased property, page 870, dated June 16th, 1919.

1560 Received as Government's Exhibit 146.

Mr. Matthews: I likewise offer in evidence second petition of The Ninth Avenue Railroad Company for the return of its leased property, page 880. The date of that is June 16, 1919.

Received as Government's Exhibit 147.

Mr. Matthews: I likewise offer in evidence Order extending time to file claims, page 897, dated June 20th, 1919.

Received as Government's Exhibit 148.

Mr. Matthews: I offer now in evidence petition with respect to proposed proffer for

operation over the Williamsburg Bridge, found at page 930, dated June 18th, 1919. 1561

Received as Government's Exhibit 149.

Mr. Matthews: That offer includes the exhibits annexed to the petition and goes down through page 964, which is the end of volume one, part two.

I will now take up volume two, page one.

I offer in evidence answer of the Receiver to second petition of The Eighth Avenue Railroad Company found at page 975, dated June 24, 1919.

Received as Government's Exihibt 150.

Mr. Matthews: I now offer in evidence, at page 978, answer of the Receiver to the petition of The Ninth Avenue Railroad Company, dated June 24th, 1919. 1562

Received as Government's Exhibit No. 151.

Mr. Caffey: I offer, at page 1036, Petition for consolidation of creditor's bill and adjustment of mortgage foreclosure action, Equity Causes 16/29 and 16/127.

Received as Government's Exhibit 152.

Mr. Caffey: At page 1052, I offer in evidence stenographer's minutes dated June 20th, 1919, extention of time for filing of claims. That begins at page 1051. 1563

Received as Government's Exhibit 153.

Mr. Caffey: I offer in evidence minutes of hearing re liquidation of tort claims, re consolidated of creditors and foreclosure action, pages 1054, 1055 and following.

Mr. Wolbarst: I object to 1054 as not having been indicated in the bill of particulars.

1564 Received as Government's Exhibit 154.

Mr. Matthews: There is no objection to limiting the offer to the portion indicated in the bill of particulars. 1054 merely contains the appearances and the title.

Mr. Wolbarst: Objection withdrawn.

Mr. Matthews: Page 1058, I offer in evidence Order appointing Receiver under adjustment mortgage and consolidating causes dated July 1, 1919.

Received as Government's Exhibit 155.

Mr. Matthews: I offer in evidence min-
1565 utes of hearing beginning on page 1073. The portion offered commencing on page 1108, dated June 25th, 1919, motion to extend and to consolidate the receivership.

Received as Government's Exhibit 156.

Mr. Matthews: Likewise minutes beginning on page 1123 on application of The Ninth Avenue Railroad Company, the same date, June 25th, 1919.

Received as Government's Exhibit 157.

The Court: We will now take a recess until 2. P. M.

1566

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2 P. M., June 8th 1920.

PRESENT:

The Court.
Same Counsel.

Mr. Caffey: At page 1146, I offer in evidence consent of Job E. Hedges, receiver, to adjustment mortgage and foreclosure suit and extension of bond, dated July 17th, 1919.

Received as Government's Exhibit 158. 1567

Mr. Caffey: Page 1148, extention of bond of Receiver in creditor's suit to duties of Receiver in adjustment mortgage foreclosure suit.

Received as Government's Exhibit 159.

Mr. Caffey: Page 1152, affidavit of the Corporation Counsel upon the application of Receiver for instruction re operation of cars on the Williamsburg Bridge.

Received as Government's Exhibit 160.

Mr. Caffey: Page 1163, minutes of hearing in matter of Eighth Avenue Railroad 1568 Company and Ninth Avenue Railroad Company, etc.

Received as Government's Exhibit 161.

Mr. Caffey: Page 1236, minutes of hearing July 14, 1919, petition for payment of interest on $400,000. loan, to the Guarantee Trust Company.

Received as Government's Exhibit 162.

Mr. Caffey: Page 1140, minutes of hearing matter of The Eighth Avenue Railroad Company, dated July 14th, 1919.

Received as Government's Exhibit 163. 1569

Mr. Caffey: Page 1256, order directing return of property of Eighth Avenue Railroad Company, dated July 15th, 1919.

Received as Government's Exhibit 164.

Mr. Caffey: Page 1264, order extending receivership to refunding mortgage foreclosure dated July 14, 1919.

Received as Government's Exhibit 165.

Mr. Caffey: Page 1266, petition for extention of receivership to refunding mortgage foreclosure, dated July 14, 1919.

1570 Received as Government's Exhibit 166.

Mr. Caffey: Page 1272, Order granting Guarantee Trust Company leave to sue, dated July 11th, 1919.

Received as Government's Exhibit 167.

Mr. Caffey: Page 1274, petition of Guarantee Trust Company for leave to sue, dated July 11th, 1919.

Received as Government's Exhibit 168.

Mr. Caffey: Page 1282, memorandum of agreement between the Receiver and The Eighth Avenue Railroad Company, dated
1571 July 15th, 1919.

Received as Government's Exhibit 169.

Mr. Caffey: Page 1297, refunding mortgage foreclosure bill, verified July 11th, 1919.

Received as Government's Exhibit 170.

Mr. Caffey: Page 1401, Exhibit A to the bill just referred to.

Received as Government's Exhibit 171.

Mr. Caffey: Page 1625,—this is the first in part two of volume two,—Plan of operation proposed by Eighth Avenue Railroad Company on its application for return of
1572 its lines.

Received as Government's Exhibit 172.

Mr. Caffey: Page 1628, plan of operation by Ninth Avenue Railroad Company on its application for return of its lines.

Received as Government's Exhibit 173.

Mr. Caffey: Page 1633, report of receiver re transfer charge proceedings, dated July 31, 1919.

Received as Government's Exhibit 174.

Mr. Caffey: Page 1636, Schedule A, to the paper last referred to.

Received as Government's Exhibit 175. 1573

Mr. Caffey: Page 1648, Schedule B, to the same paper.

Received as Government's Exhibit 176.

Mr. Caffey: Page 1624, Schedule C to the same paper.

Received as Government's Exhibit 177.

Mr. Caffey: Page 1661, answer of New York Railways Company to refunding mortgage foreclosure bill, verified August 1, 1919.

Received as Government's Exhibit 178.

Mr. Caffey: Page 1740, answer of the defendant Job E. Hedges, as the Receiver 1574
of New York Railways Company to bill of complaint of the Farmers Loan & Trust Company, trustee, verified August 29, 1919.

Received as Government's Exhibit 179.

Mr. Caffey: Page 1746, Order permitting Central Union Trust Company of New York to sue Receiver Re South Ferry Railroad Company foreclosure, dated September 11, 1919.

Received as Government's Exhibit 180.

Mr. Caffey: Page 1748, petition for leave to sue signed by Central Union Trust Company of New York, verified September 10th, 1575
1919.

Received as Government's Exhibit 181.

Mr. Caffey: Page 1755, bill of complaint of the South Ferry Railroad Company, mortgage foreclosure.

Received as Government's Exhibit 182.

Mr. Caffey: Page 1776, Exhibit A, to the last paper.

Received as Government's Exhibit 183.

Mr. Caffey: Page 1787, Petition for con-

1576 solidation of first real estate and refunding mortgage foreclosure with consolidated clause.

Received as Government's Exhibit 184.

Mr. Caffey: Page 1794, order consolidating first real estate and refunding mortgage foreclosure with prior consolidated cause, dated September 11, 1919.

Received as Government's Exhibit 185.

Mr. Caffey: Page 1797, petition for instructions Re Storage Battery Lines.

Received as Government's Exhibit 186.

1577 Mr. Caffey: Page 1826, order directing temporary discontinuance of Storage Battery Lines, dated September 12th, 1919.

Received as Government's Exhibit 187.

Mr. Caffey: Page 1828, Notice Re Receiver's affidavit, supplemental to Answers and Petitions of 9th Avenue Railroad for return of leased property.

Received as Government's Exhibit 188.

Mr. Caffey: Page 1831, receiver's affidavit supplemental to answers to Petition of 8th Avenue Railroad Company for return

1578 of leased property, dated September 4th, 1919.

Received as Government's Exhibit 189.

Mr. Caffey: Page 1841, order to show cause, Re 8th Avenue Railroad transfer arrangement, dated September 10th, 1919.

Received as Government's Exhibit 190.

Mr. Caffey: Page 1843, petition for instructions Re 8th Avenue Railroad transfer arrangement, dated September 9th, 1919.

Received as Government's Exhibit 191.

Mr. Caffey: Page 1849, affidavit of re-

ceiver's auditor used on the applications 1579
enumerated below, verified September 12th, 1919.

Received as Government's Exhibit 192.

Mr. Caffey: Page 1890, part of minutes of hearing, dated September 11th, 1919, entitled "Re consolidation of first real estate and refunding mortgage foreclosure."

Received as Government's Exhibit 193.

Mr. Caffey: Page 1927, part of minutes of hearing of September 11, 1919, entitled "Re South Ferry R. R. Co., foreclosure."

Received as Government's Exhibit 194.

Mr. Caffey: Page 1928, part of minutes 1580
of hearing entitled "Re Storage Battery Line."

Received as Government's Exhibit 195.

Mr. Caffey: Page 1948, part of minutes of same hearing entitled "Re discontinuance of transfers with 8th Avenue R. R."

Received as Government's Exhibit 196.

Mr. Caffey: Page 1977, minutes of hearing of September 22nd, 1919, Re Williamsburg Bridge operation.

Received as Government's Exhibit 197.

Mr. Caffey: Page 1982, affidavit of John 1581
Bauer, Re Williamsburg Bridge operation, verified September 11, 1919.

Received as Government's Exhibit 198.

Mr. Caffey: Page 1987, affidavit of Frederick T. Wood, Re Williamsburg Bridge operation.

Received as Government's Exhibit 199.

Mr. Caffey: The above affidavit was verified September 19, 1919.

1582 Page 2011, minutes of hearing of September 24, 1919, entitled "Re Discontinuance of transfers with 8th Avenue Railroad Company.

Received as Government's Exhibit 200.

Mr. Caffey: Page 2019, minutes of hearings of September 26, 1919, Re 8th Avenue Railroad transfers and 9th Avenue Railroad.

Received as Government's Exhibit 201.

Mr. Caffey: Page 2048, minutes of hearing of October 1, 1919, Re 9th Avenue Rail-

1583 road.

Received as Government's Exhibit 202.

Mr. Caffey: Page 2069, affidavit of Frederick T. Wood re return of certain cars to 9th Avenue Railroad Company, verified October 1, 1919.

Received as Government's Exhibit 203.

Mr. Caffey: Page 2083, order directing return of property to the 9th Avenue Railroad Company, dated September 26th, 1919.

Received as Government's Exhibit 204.

Mr. Caffey: Page 2097, order approving

1584 the agreement relating to the return of property to the 9th Avenue Railroad Company by the receiver of the New York Railway Company and directing the return of certain additional cars, dated September 30th, 1919,

Received as Government's Exhibit 205.

Mr. Caffey: Page 2000, schedule one to the order.

Received as Government's Exhibit 206.

Mr. Caffey: Page 2102, schedule 2 to the same order.

Received as Government's Exhibit 207.

Mr. Caffey: Page 2114, Order directing payment of interest due October 1, 1919, on 34th Street Crosstown Railway bonds, dated September 30th, 1919. 1585

Received as Government's Exhibit 208.

Mr. Caffey: Page 2116, Receiver's petition Re interest on 34th Street Crosstown Railway Company, dated September 27th, 1919.

Received as Government's Exhibit 209.

Mr. Caffey: In the matter on the Interborough Consolidated Corporation bankrupt, bankruptcy docket number 26690, I offer creditor's petition in bankruptcy dated March 21st, 1919, being No. 1 of paragraph III, Bill of Particulars. 1586

Received as Government's Exhibit 210.

Mr. Caffey: Petitioning Creditors' application for appointment of Receiver pending adjudication of bankruptcy, dated March 21st, 1919, in the same proceedings, being No. 2 in paragraph III, Bill of particulars.

Received as Government's Exhibit 211.

Mr. Caffey: Next, Order appointing James R. Sheffield, Esq., temporary receiver of the property, assets and effects of the Interborough Consolidated Corporation, dated March 31st, 1919, in the same proceedings, being No. 3 of paragraph III of the Bill of Particulars. 1587

Received as Government's Exhibit 212.

Mr. Caffey: Next, adjudication in bankruptcy and order of reference, dated March 28th, 1919, in the same proceedings, being No. 4 of paragraph III of the Bill of Particulars, dated March 28th, 1919.

Received as Government's Exhibit 213.

1588 Mr. Caffey: Next, certificate of trustee's election at creditors' meeting of April 25th, 1919, and approval by Referee in the same proceedings, being No. 5 of paragraph III of the Bill of Particulars.

Received as Government's Exhibit 214.

Mr. Caffey: Next, schedule in bankruptcy of the Interborough Consolidated Corporation, bankruptcy dated April 14th, 1919, in the same proceedings, being No. 6 of paragraph III of the Bill of Particulars.

Received as Government's Exhibit 215.

1589 Mr. Caffey: Next, Order dated April 26th, 1919, by Macgrane Coxe, Referee in Bankruptcy, approving the bond of James R. Sheffield as trustee in bankruptcy of the estate of Interborough Consolidated Corporation, bankrupt, being No. 7 of the same paragraph of the Bill of Particulars.

Received as Government's Exhibit 216.

Mr. Caffey: Next, Order of Referee authorizing Trustee to retain Messrs. Leventritt Cook, Nathan & Lehman as his attorneys and counsel, dated May 12th, 1919, in the same proceeding, being No. 8 in paragraph III of the Bill of Particulars.

1590

Received as Government's Exhibit 217.

Mr. Caffey: Next, Notice of Creditors, dated May 21st, 1919, in the same proceeding, being No. 9 of paragraph III of the Bill of Particulars.

Received as Government's Exhibit 218.

Mr. Caffey: Next, Report of Referee on Receiver's account, etc., dated June 7th, 1919, in the same proceeding, being No. 10 of paragraph III of the Bill of Particulars.

Received as Government's Exhibit 219.

Mr. Caffey: Next, Order of June 24th, 1919, signed by Hon. Julius M. Mayer, United States District Judge, concerning Referee's report, etc., in the same proceedings, being No. 11 of the same paragraph of the Bill of Particulars. 1591

Received as Government's Exhibit 220.

Mr. Caffey: I next offer first report of James R. Sheffield, as Trustee of the estate of Interborough Consolidated Corporation, bankrupt, dated July 30, 1919, in the same proceeding, being No. 12, paragraph III of the Bill of Particulars. 1592

Received as Government's Exhibit 221.

Mr. Caffey: Next, letter dated September 4th, 1919, to Honorable Julius M. Mayer, signed by Stone & Webster, of 120 Broadway, New York City, in the same proceeding, being No. 13 of paragraph III of the Bill of Particulars.

Received as Government's Exhibit 222.

Mr. Caffey: Memorandum of Mayer, J., dated September 6th, 1919, in the same proceeding, being No. 14 of paragraph III of the Bill of Particulars. 1593

Received as Government's Exhibit 223.

Mr. Caffey: Letter dated September 8th, 1919, signed James R. Sheffield, Trustee, Interborough Consolidated Corporation, Job E. Hedges, Receiver, New York Railways Company and Lindley M. Garrison, Receiver of Brooklyn Rapid Transit Company, being No. 15, paragraph III of the Bill of Particulars.

Received as Government's Exhibit 224.

Mr. Caffey: Next, Order dated October 2nd, 1919, by Macgrane Coxe, Referee in

1594 Bankruptcy, extending to December 1, 1919, the time of James R. Sheffield to file a second report as Trustee in the Interborough Bankruptcy proceedings, of the estate of the Interborough Consolidated Corporation, bankrupt, being No. 16, paragraph III of the Bill of Particulars.

Received as Government's Exhibit 225.

Mr. Caffey: If the Court please, we have endeavored diligently to serve a subpoena upon one witness whom we desire to call. We have not been able to serve him or secure
1595 his presence yet. His testimony is merely cumulative. If he were present I should like to put him on the stand, and I wish to give notice that in the event we succeed in serving a subpoena upon him I shall ask leave to reopen the case to the extent of being allowed to put that witness on the stand.

With that reservation the Government rests.

Mr. Mooney: We do not recognize any reservation in a case of this kind, your Honor.

1596 The defendant now makes the following motions:

First: That another judge be designated to hear the proceeding for the reason already stated in the stenographer's minutes.

Second, that the judge presiding at this hearing is a witness to material facts in the proceeding and should be called and examined as such by the Government.

Third, that the defendant is prevented from calling the judge presiding at this pro-

ceeding as a witness in the defendant's be- 1597
half, because the judge may not be properly called as a witness.

Now having made these motions I pause.

The Court: Motions denied.

Mr. Mooney: I except to the denial of each motion.

The defendant or respondent moves to dismiss the proceeding upon each of the grounds, separately stating them, set forth in the Motion to Quash and in the demurrer, and upon the further grounds:

The Court is without jurisdiction.

The Court has no jurisdiction of the per- 1598
son of the respondent.

Because the proofs fail to establish any offense.

Because the proofs fail to establish any misbehavior in the presence of the Court.

Because the proofs fail to establish any misbehavior in the presence of the Court or so near thereto as to obstruct the administration of justice.

Because the proofs fail to establish any contempt in the face of the Court or constructively in its presence. 1599

Because the proofs fail to establish that any publication was made by the respondent of or concerning the Court.

Because the proofs show that the Court was acting in an administrative capacity with respect to the matters embraced in the alleged contemptuous communication.

Because the proofs fail to establish any contempt in the face of the Court or constructively in its presence.

1600 Because the proofs fail to establish that any publication was made by the respondent of or concerning the Court.

Because the proofs establish that the letter set out therein was a privileged communication.

Because the proofs show that the respondent in the writing of the letter was acting within a privileged sphere.

Because the proofs establish that the letter therein set out and complained of was an official communication from one public
1601 official to another public official, written and dispatched of and concerning public business.

Because the proofs fail to establish that the letter therein set out and complained of was written with a view of influencing the Court with respect to the decision of any matter or issue then pending before the Court for decision or judicial determination.

Because the proofs establish that the letter therein set out and complained of was not written for the purpose of obstructing the administration of justice.

1602 Because the proofs fail to establish any criticism of the Court with respect to a cogitation of the Court then in process of development.

Because the proofs fail to establish that the publication of the letter complained of was ever authorized by the respondent.

Because the proofs fail to establish that the letter complained of was ever authorized by the respondent to be published with the intent or view of obstructing the administration of justice.

Because the proofs fail to establish that the letter complained of was ever by this respondent authorized to be published with the view or intent of influencing the judicial determination or decision of the Court upon or with respect to any matter or issue then pending before the Court for judicial determination or decision. 1603

Because the letter from the respondent as Comptroller to Nixon as Commissioner was itself, as a matter of law, a public document which the respondent was powerless to suppress or withhold from publication. 1604

1. That the proofs show that the Judge mentioned in the alleged contemptuous communication was on the occasions therein referred to acting in an administrative and not in a judicial capacity; and that the Court had itself so declared in one of the decisions or opinions of the Court, that has been offered in evidence by the Government; and that a contempt is not susceptible of being committed against a Judge acting in an administrative capacity.

1605

2. That the proofs show there was no publication by the defendant.

3. That the proofs show that at the time the Court ordered the institution of his proceeding there had been no publication.

4. That the proofs show that at the time the Court ordered the institution of this proceeding there had been no publication in any newspaper.

1606

5. That the proofs show that at the time the Court ordered the institution of this proceedings there had been no publication other than the reading of the alleged contemptuous communication in the conference held by the Public Service Commission.

6. That the defendant is sought to be prosecuted in this proceeding for a publication not made by him but by the Public Service Commissioner, Mr. Nixon.

1607

7. That no misconduct was imputed to the Court (even within the construction ascribed by the Government and announced by the judge presiding at this hearing as applicable to the alleged contemptuous writing), as no duty or obligation rested on the Court as matter of law to afford to the writer or to other members of the Board of Estimate and Apportionment any access to original sources of information concerning the property and affairs of the various public corporations holding franchises to operate in the streets of New York—neither the writer

1608

nor the Board, nor the City was a party to the proceedings referred to and was not entitled as matter of legal right to access thereto, that is, to access to original sources of information.

Now I repeat the last variation as follows:

That no misconduct was imputed to the Court, as no duty or obligation rested on the Court as matter of law, after the Court had denied the application for intervention and after the Court had refused to appoint

the co-receiver designated or nominated by 1609
the Board of Estimate and Apportionment.

From and after those decisions, either or both of which are prior to the writing of the letter which forms the basis of this proceeding, no duty or obligation rested on the Court, as matter of law, to afford to the writer or other members of the Board of Estimate and Apportionment any access to original sources of information concerning the property and affairs of the various public corporations holding franchises to operate in the streets of New York—neither the 1610
writer, nor the Board, nor the City was a party to the proceedings referred to, the Court having denied intervention and having denied the application for the appointment of a co-receiver, that none of them was entitled as matter of legal right to access to the original sources of information.

Now, there are two points there that I would especialy like to argue to your Honor, because I feel that neither one of them has been distinctly presented, and neither of them has been distinctly passed upon; but both of them may have been passed upon in 1611
effect.

I will briefly state them, not with the desire to argue them, until your Honor has indicated your wish upon the point.

The first of them relates to the point of publication of the writing, other than a publication such as your Honor might possibly hold sprang from the reading of the letter by Commissioner Nixon. At one time during the proceeding, according to the stenog

1612 rapher's minutes, it appears that counsel asked the Court to assume that the proof would be that the Comptroller had not given out the letter for publication, and the Court then suggested in substance that if that appeared, an interesting question would be presented for discussion. The proof of the Government is that the letter was given out in flimsy form by Kerrigan, the secretary to the the Department of Finance; but the proof fails to show any overt act or other act by the Comptroller in support of the giv-
1613 ing out of the letter for publication.

Now, if that is still an open question in your Honor's mind I would like to be heard upon it. If you intended to cover that by your decision upon the demurrer or by any ruling that has taken place during the oral hearing, why no useful purpose would be served by arguing that.

The Court: While I think it would be unnecessary to discuss it now, that point, however, may be discussed in the brief.

The Court denies the defendant's motion
1614 just made.

Mr. Mooney: Now, we except to your Honor's ruling at this time and I make a separate motion here, which I understand was to be reserved, and that is to strike out the testimony of Mr. Kerrigan.

The Court: Motion denied.

Mr. Mooney: I except.

And if I have stated it more broadly than the record shows or indicates, I assume your Honor intends to pass upon the motions that were thus reserved, and it will be as-

sumed that I have re-stated those motions without exactly repeating them? 1615

The Court: Quite right.

Mr. Mooney: And to that I except.

And the other motion I would like to be heard upon has never been presented in exactly the form in which it is now presented, and is, I think, I may say with all modesty, deserving of very grave consideration by the Court; and that is: Whether in the nature of things, any contempt was or could be committed by the writing of this letter after the Court had decided that the city should not be allowed to intervene at this stage and after the Court had decided against the appointment of a co-receiver? 1616

If your Honor will very briefly hear me upon that point I think perhaps it might be well.

Mr. Mooney then argued the motion.

The Court: I understand your argument perfectly. I deny the motion. Counsel may make a memorandum in his brief of this point.

Mr. Mooney: I except.

The Court: To make the record clear I deny the motion to dismiss and deny the same in respect of each and every ground urged in support thereof, and the defendant may have an exception to my denial, to each and every denial. 1617

Mr. Mooney: We except in that way.

It was my intention, your Honor, at this time, as the record shows, to ask that the matter stand over so that we might summarize the proof and proceed with greater

1618

celerity, but I believe that time will be saved on the other hand by our calling some of the witnesses that we have here on hand, and then I shall ask your Honor to bear in mind that we may have at least over night to prepare upon what might be termed the broadest parts of the case.

The Court: Certainly.

1619 JESSE C. BERDEAU, a witness called in behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Mooney:

Q. You are attached to the Clerk's office of the United States District Court, Southern District of New York, in the Court House in the City of New York? A. Yes, sir.

Q. And have been for some years? A. Yes, sir.

Q. And you were serving in that capacity on the 6th day of October, 1919? A. Yes, sir.

1620

Q. I show you an order which has been read in the record and is marked "United States District Court, filed October 6th, 1919, Southern District, New York." Do you know about what hour of the day that order was filed?

Mr. Matthews: I object to that on the ground that it is immaterial.

The Court: Question allowed.

A. I don't know the exact time it was filed.

Q. Did you see it on that day? Do you remember seeing it? A. I did.

1621

Q. And was it then on file? A. At the time I saw it it was.

Q. And at what time of the day was that?

Mr. Matthews: Same objection.
The Court: Question allowed.

A. Between twelve and one o'clock.

Q. Can you state whether it was nearer twelve or nearer one? A. Well, I could not state whether it was nearer twelve or nearer one. It was the lunch hour.

1622

Cross Examination by Mr. Matthews:

Q. What were you doing on October 6th Mr. Berdeau, what part of the work of the Clerk's office did you have in hand? A. Assisting Mr. Leary.

Q. Bill Leary? A. Yes.

Q. He has charge of the criminal papers? A. Yes.

Q. And handles most of the criminal work? A. He handles all of the criminal work.

Q. Now, were you in court on that day? A. No, I was not in court that day, I was in the office entering papers. 1623

Q. In what part of the office? A. In the Clerk's office, room 349.

Q. What time do you usually go to lunch? A. I generally start around twelve to twelve-thirty.

Q. And come back at about what time? A. Half past one.

Q. Do you recall going to lunch on that day? A. Yes.

Q. Did you see this paper before you went to lunch or after you came back? A. It was before

1624

I went to lunch that I saw it. I have a habit of always looking in the order box to see if there was anything which should be entered immediately before I go.

Q. Did you enter this immediately? A. No, I did not. I looked at it to see what it contained, and I did not think it should be entered at that moment, so I went out to lunch.

Q. Did you ever see an order like this before? A. I don't remember whether I ever saw one exactly like that before except that one.

1625 Q. Don't you remember the Order in the case of one Markowitz, similar to this? A. I don't remember that Order.

Q. The Order was in practically the same form. A. No, I don't remember that, exactly like that.

Q. That order was filed, I think, the middle of September. A. I wouldn't say that I remember it, because I haven't any distinct recollection of it.

Q. Have you an independent and distinct recollection of this Order of October 6th? A. Yes.

Q. What brings it to your memory? A. The fact that I have spoken with people two or three

1626 times at the window who wanted to find out what was in it.

Q. You spoke with people at the window about it? A. Within the next few days.

Q. You were not there when the order was filed? A. No, I won't say that I was there or that I was not there. All I know is it was in the order box when I looked at it.

Q. Had it already been stamped? A. It had already been stamped when I saw it.

Q. Did it have any marks on the back? A.

1627

Q. Matter of Charles L. Craig. Was that on it when you first saw it? A. I can't remember whether it had that number on or not.

Q. That is the number indicating that it has been entered? A. No. That is the number showing where it should be entered. On the criminal side there is no mark on the paper showing that it should be entered.

Q. Up to that time you had no docket number for Charles L. Craig? A. No, sir.

Q. So that that number would not have gone there until after it had been entered and a docket space had been assigned to it? A. Yes, not until that docket space had been assigned to it. 1628

Q. Is any time record kept in the Clerk's office of the exact time, the hour, that the papers are filed? A. Not in the criminal part. There is in bankruptcy.

Q. Any other parts? A. I am not sure about any others. I know about bankruptcy.

Q. I think, as a matter of fact, that you are right about that, only in bankruptcy. What is the first entry made of a criminal paper like this, after filing, what was the first entry made of that paper? A. The first entry, so far as that paper is concerned, that would be a brief summary of that paper. 1629

Q. Is there a blotter in the office on which you or Mr. Ferdon enter such papers? A. Yes, Mr. Ferdon has no criminal papers, except on the matter of bail bonds.

Q. Does that blotter indicate the time when papers were filed? A. No.

Q. This would not be on that blotter then? A. No.

1530

Q. Would there be any way in which you could determine what papers were filed just before and what papers were filed just after this? A. None at all.

Q. So you have to rely upon your recollection that it was sometime between twelve and one that you first saw it? A. Yes.

Q. You say you go to lunch between twelve-thirty— A. Between twelve and one, around that neighborhood.

Q. You recall quite distinctly you were not in
1531 court on that day? A. Yes. I was not.

Q. You didn't have to substitute for Mr. Leary or help out in any of the other parts? A. No.

Q. The usual time for the court to adjourn in the mid-day is one to two, in this building? A. Yes, that is the time the court rooms are closed. The men in the office go to lunch whenever they have a chance, that is the way they work.

Q. You can't fix the exact time you went out to lunch that day, or the time you returned? A. No.

Q. It was your impression that you saw this order before you went to lunch? A. It is.

1532 Q. It is possible that it was after you came back from lunch? A. It is possible, yes.

Q. You wouldn't swear positively it was before you went to lunch? A. No, I only say it was at lunch time.

Q. It was at the lunch hour? A. Yes.

Q. And the lunch hour, that is in this building, is from one to two? A. Yes, in the court rooms.

Q. And for the clerks of court? A. Yes.

Q. And, of course, they have to do such work as is necessary between the adjournment and the resuming of the session of the court? A. Yes.

1633

Q. In fact the clerks do not go out immediately when the court adjourns, they have to take care of their papers? A. No, they do not.

Q. In fact they have to chase back pretty quickly to get back at two? A. Yes, sir.

Q. And sometimes you are tied up in the clerk's office so you can't get out promptly? A. Yes, sir.

Q. And it not infrequently happens that you don't get back until sometimes after two when you are not engaged in court? A. We make it a rule to be back within forty-five minutes to an hour, within four or five minutes, not later, how- 1634
ever the time will be dependent on the time when you go out.

Q. So if you go out later your return time is still later? A. Yes.

Q. As a matter of fact on October 6th about the time this order was filed, applications were made at the clerk's office for copies of the order, weren't they, do you recall that? A. They would not come to me for that. They would go to Mr. Ferdon.

Q. That application would be made to Mr. Ferdon? A. Yes.

Q. And if copies were made and furnished, he is 1635
the man to whom would they apply? A. They would have to go to him.

Re-direct Examination by Mr. Mooney:

Q. Do you remember the newspaper men coming around and asking about that order before you went to lunch? A. The newspaper men didn't ask me. They probably went to Mr. Ferdon, because all the newspaper men would go right to him.

1636

CORNELIUS TITUS, a witness called in behalf of the defendant, being duly sworn, testifies as follows:

Direct Examination by Mr. Mooney:

Q. You are attached to the clerk's office of the United States District Court for the Southern District of New York in the Court House in the City of New York, are you? A. I am.

Q. And have been for some years? A. I have.

1637

Q. And you were on duty on October 6th, 1919? A. I was.

Q. In the Clerk's office? A. I don't know whether I was in the office or in Court.

Q. I show you a paper endorsed "United States District Court, filed October 6th, 1919, City of New York," and I ask you whether you saw that order on the day it was filed?

Mr. Mathews: I object to that on the ground that it is immaterial.

A. I did.

1638

Mr. Matthews: And I take the same objection to this line of testimony.

The Court: Yes.

Mr. Matthews: And the motions are made without actually repeating them to strike out the testimony of the last witness, and also this witness.

The Court: Yes.

The Witness: I saw that.

1639

Q. About what time did you see it? A. I can't tell you just what time, but I remember having seen that order.

Q. Can you fix it by any incident or any event when you first saw it? A. The first time?

Q. Yes. A. No, I can't say as to the time. The only incident I can fix is that we didn't know just what number of the criminal docket to put in.

Q. Now, whom do you refer to as "we?" A. Mr. Leary.

Q. Did you have any talk with the last witness on the subject at that time? A. At that time.

1640

Q. At that time? A. Yes. I may have. I can't say whether I did or I did not.

Q. Are you the man to whom the order was handed to be filed? A. No.

Q. And your attention was first drawn to the order by the fact of the newspaper men wanting to see it or get a copy of it? A. No.

Q. Well, what did first draw your attention to it aside from the fact that you wanted to know or someone wanted to know where it was to be entered? A. Well, we generally try to keep track of what is going on in the criminal department. We have a box there on the desk which we look through.

1641

Q. Well, do you have a recollection of an incident or of an act, or a fact which calls your mind back to the filing of that order? A. No.

Q. Did you see it handed through the filing window? A. No, I didn't.

Q. And where was it when you first saw it? A. The first time I saw it it was in the tin box on Mr. Leary's desk.

Q. The fact that it has no hour of filing upon it,

1642

is that a usual or unusual thing with matters relating to criminal proceedings? A. That is usual.

Mr. Mooney: That is all.
Mr. Matthews: No questions.

By Mr. Mooney:

Q. Did you see the paper, if you can recall, before or after you went to luncheon on that day, if you did go to luncheon? A. That I cannot say.

1643

JAY McNAMARA, a witness called in behalf of the defendant, being duly sworn, testifies as follows:

Direct Examination by Mr. Mooney:

Q. Mr. McNamara, you are a shorthand writer by profession? A. Yes.

Q. And were you on the 6th day of October, 1919, acting as shorthand reporter under the name of the General Shorthand Reporting Company,

1644 having an office at 150 Nassau Street, in reporting the proceedings of the Public Service Commission of the State of New York, First District? A. Yes.

Q. And did you on that day work under a contract dated on or about May 31st, 1917? A. Yes.

Q. In that connection? A. Yes.

Q. And have you the contract with you? A. No.

Q. Will you state whether in reporting these proceedings of the Commission you have an arrangement whereby the Commission is entitled to be credited against the charge to the Commission a certain percentage for each transcript sold?

1645

Mr. Matthews: I object to that as immaterial.

The Court: I don't see the materiality, but I will allow you to show the percentage.

Mr. Matthews: I think if there is a contract, a written contract, that contract should be produced.

The Court: I will allow it in order to expedite the trial.

The Witness: The contract reads that I shall credit against the charge to the Commission a certain percentage on all copies 1646 sold.

Q. As a matter of fact you were subpoenaed to produce the contract itself, were you not? A. I did not interpret it so in reading it.

The Court: I am willing to take Mr. McNamara's statement.

Mr. Mooney: If that is so, I am satisfied.

Q. You did go out to sell copies of the report of the conference that was held on that day, namely, October 6th, 1919? A. I did get out copies, 1647 and copies were sold.

Q. There was a large demand for the copies, were there not? A. I should say not a large demand, probably from individual sources.

Q. I didn't ask you that. There was a large demand?

Mr. Matthews: I object to the question as leading. The witness has answered properly.

The Court: What was the demand?

1648

Q. What was the demand? You had to reprint even, didn't you?

Objected to as immaterial. Overruled.

Q. How large a reprint? A. I reprinted, probably through the misapprehension of the Commission in not ordering the correct number originally. Under the contract, in other words—I furnish a certain number of copies—they didn't know how many copies they wanted, the matter was held up,
1649 and I went ahead and printed them. The reprint was called for while it was still on the press, I think, the first reprint.

Q. What was the original printing? A. Fifteen copies was the original printing for the Public Service Commission.

Q. Then you got out copies for practically everyone named as being at the conference, didn't you? A. No, that is not true. I did get out copies for probably eight or ten different parties present at the conference that day.

Q. And then after that you reprinted again,
1650 didn't you? A. As I recall it there were two reprints. One took place probably three or four weeks later than the original hearing.

Q. Well, it is very unusual to reprint at all your proceedings, isn't it?

Mr. Matthews: I object to that as immaterial and leading.

Question allowed.

A. It would not be unusual in this case, inasmuch as the Commission did not determine immediately how many copies. I should have waited

1651

for them to decide before I had the printer run off the copies.

Mr. Mooney: That is all.

Cross Examination by Mr. Matthews:

Q. How long have you been employed by the Public Service Commission to do that reporting? A. Three years.

Q. And the same form of contract has been in existence during substantially all that time, has it not? A. Substantially the same form of contract. 1652

Q. And in reporting the particular proceeding of October 6th, you had Mr. Joseph Friel actually do the work of reporting? A. He did the physical reporting, Mr. Friel.

Q. And he was the only man you had there that day? A. Yes.

Q. You were yourself there? A. I was there during the entire hearing.

Q. But he did the actual reporting? A. He did the actual reporting.

Q. Now, part of that hearing was closed, was it not? Do you recall when the newspaper men were 1653 excused from the room? A. I recall the remarks of Commissioner Nixon that it would be a closed hearing, but whether that actually went into effect, whether it was followed out, I am a little uncertain at the moment. My impression is that it was.

Q. Then it is true that you did not sell any of the copies of the proceeding until there was a release order by the Public Service Commission?

Mr. Mooney: I object to the words "release order," because—

The Court: Objection sustained.

1654 Q. Until the Public Service Commission informed you that it was all right to go ahead and sell copies?

Mr. Mooney: I object to any further questions about that. If there is any question about that I want this gentleman's contract. There was no question as to whether the Public Service Commission should release or not. He had a contract.

The Court: Objection sustained.

1655 Q. What was your practice in reporting, after you had a public hearing at which the newspaper men were present, you went ahead and sold copies as soon as you had it out? A. If it was a public hearing and I had not been instructed not to sell I would follow the ordinary procedure, get the copies typewritten, or printed, as the case might be, and deliver the copies to the Public Service and to whoever ordered copies within the course of a day or so.

Q. How soon after October 6th, did you deliver the first copies to the Public Service Commission in
1656 this case? A. As I recall it in this particular case, between ten and eleven o'clock a rough typewritten draft of the proceedings of the day before; that was merely in revised form for the printer. That was taken up to the Commissioner, to be left, instead of the printed copies, inasmuch as I could not get the printed copies out that night, I brought it and left it with the Commissioner. Then later brought over another copy to the printer and had him run off the specified number of copies desired.

Q. So that the delivery of the printed copies didn't take place until the 8th of October, or after? A. My recollection is this was Monday, the 6th,

and about fifty copies were delivered to me late Wednesday afternoon, I recollect getting them here. 1657

By the Court:

Q. That was Wednesday? A. That was Wednesday.

Q. The 8th? A. The 8th.

By Mr. Matthews:

Q. It was on Wednesday afternoon or Thursday morning that the first printed copies were delivered? A. On Wednesday afternoon or Thursday morning as I recall at present, the first printed copies were delivered to the Commissioner. 1658

Q. Now, what is your practice when you report closed sessions of the Commission with respect to selling copies? A. I recall in the three years we only had three instances where we had closed hearings, and in those cases I had instructions not to sell copies to anybody outside.

Q. I understand from your testimony that you delivered only one copy on the morning of the 7th, am I right? A. I delivered only one copy on the morning of the 7th, one rough typewritten copy. 1659

Q. You didn't sell any typewritten copies at all of these proceedings? A. No, there were no typewritten copies sent out.

Q. And the first printed copies that were available were not fully completed until when, Wednesday afternoon or Thursday morning? A. Until late Wednesday afternoon or early Thursday morning.

Q. Now, can you recall the date on which you sold the first copy of the proceedings, the first sale by

1660 you? Did you sell any Wednesday? A. You mean to anyone outside of the Commission?

Q. Yes. A. The first sale likely occurred on Wednesday, but it did not go out until Thursday. It was put in the mail that night and delivered by the mail Thursday morning.

Q. Did you sell some copies Thursday? A. No, I delivered—

Q. No, I mean sell them as distinguished from delivering them to the Commission under your contract? A. Those are practically all standing orders.

1661 In other words, the order had been standing with the different railroads, when they have a hearing they order a copy.

By the Court:

Q. The question is outside of what you delivered to the Public Service Commission, when did the first copies go to some other person? A. I answered it—that it was either late Wednesday afternoon, possibly mailed Wednesday night and they reached the parties early Thursday morning.

1662 Q. That is those went to— A. Those that went to the different railroad companies—

Q. —who have standing orders with you for copies of the proceedings? A. That is correct.

Mr. Matthews: That is all.

Re-direct Examination by Mr. Mooney:

Q. Those standing orders, did they call for, and did you deliver in pursuance thereof, copies of these proceedings to the counsel representing the railroads interested in the conference? A. In other words, the B. R. T. or the Interborough might have

a standing order for two copies. Unless advised to the contrary, which I was not in this case, I brought them over or delivered two copies to the different parties. 1663

Q. That is what you did in this instance, mailed two copies, or sent two copies, to each person attending the conference representing a railroad? A. No, that is not correct.

By the Court:

Q. To each of the parties having an order? A. I sent whatever the order called for, one or two or three copies, whatever the order called for. 1664

Q. In any event you sent whatever the order called for? A. I sent one to some, two to some, and more to others.

By Mr. Mooney:

Q. You observed the same course with respect to these minutes you did with reference to all other minutes? A. With the exception that there was a stop order on it. In other words, I was not to release this until a certain day. Then I followed the same procedure after I got instructions, which was— 1665

Q. What was the stop order for? A. In other words it was stated that the hearing was closed, and I had instructions not to give newspapers or anybody else any data or information regarding the conference.

Q. Now, when was that stop order taken off, that afternoon? A. As I recall it it was the next morning that I got absolute information to release the copies, after I brought that rough draft,

1666 although on the afternoon of the day of the hearing, as I remember it, someone said, although I don't recall who it was, that I could release the copies, that it was all right to go ahead.

Q. I show you a paper that is produced by another witness, not present in court, from the commission, as an original paper from the files, and ask you whether the entries therein are in your handwriting, referring to the second entry therein? A. No.

Q. In whose handwriting is that? A. I do not know.

1667 Q. Is that Mr. Friel's handwriting? A. I could not answer positively.

Q. Do you recognize the sheet as one of the official time sheets of the commission? A. I recognize it.

Q. And do you recognize any marks of authenticity therein emanating from you or anyone in your employ? A. Yes, I recognize that this is the form that we fill in, the time sheet, when the hearing is over we make up one of these time sheets, and this is a regular time sheet we would have made out. I don't recognize any of the entries on it, I mean

1668 the handwriting of any of the entries.

Q. Do you know whose the initials "H. L." are? A. The initials?

Q. Yes. A. I don't recall at the moment who those initials represent.

By Mr. Matthews:

Q. You get the official time, do you not, and enter it up in the transcript which you take of hearings? A. It appears in the transcript, the time we start and also the time the hearing is adjourned.

Q. That is done in the usual and ordinary course

of business, and that time is correct? A. I won't say it is absolutely correct. It is approximately. In other words it might be twenty minutes to ten and it might appear quarter to ten. It is approximately correct. 1569

HARRY B. MINTZ, a witness, called in behalf of the defendant, being duly sworn, testifies as follows:

Direct Examination by Mr. Mooney: 1570

Q. I show you a paper and ask you where that is produced from? A. That is a time sheet that is first left in the drawer of the reporter's desk. At the end of each hearing the reporter enters on here the nature of the hearing, the time commenced, which he takes from his own notes, the Commissioners present, the time adjourned and the adjourned date. This then comes down to my files where it is kept among the other time sheets.

Q. What is your legal relation to the Commission? A. I am Junior Assistant Counsel in charge of cases and orders and calendars. 1571

Q. And is this record kept for purposes of exactness in the Commission? A. It is.

Q. And after you have received it in the way you have spoken of, to whom does it go, or by whom is it passed upon in addition to yourself? A. That remains in my office.

Q. Whose initials do you find opposite the second entry? A. That is one of my assistants, Helen Leventhall.

Q. And do the names entered there indicate as

1672 well as the Commissioner, the members of the staff and other persons who were present at the hearing? A. Yes, who sat on the bench at the hearing, and The Transit Construction Commission.

By the Court:

Q. The names are, Nixon, Delaney, the Construction Commissioner? A. Yes, there—

Q. And Ryan is the Deputy Construction Commissioner? A. That is right.

1673 Q. And Glennon and Barrett were attached to the Public Service Commission and others were attached to The Transit Construction Commission? A. Yes, that is right.

By Mr. Mooney:

Q. When you spoke of the reporter, you meant the shorthand reporter, did you? A. Yes.

Q. What is there in that paper, or your knowledge connected with this paper, to indicate its correctness as to the time and substance? A. This paper?

1674 Q. Yes. A. After it comes to my office, if I am up in the hearing room, I bring this time sheet down to Miss Leventhall and she enters it in what we call a docket or a hearing book. That is also checked off against the minutes, printed or typewritten when they come in, that is as to the date adjourned, the time commenced and the time adjourned.

By the Court:

Q. Were you present at this hearing? A. Part of the hearing. I didn't remain throughout it.

1675

Q. What time did you leave? A. I left early in the hearing.

Q. In whose handwriting is the entry which appears on the right hand column, the second entry? A. The time sheets are always in the handwriting of the reporter.

Q. That is the shorthand writer? A. The shorthand writer.

By Mr. Mooney:

1676

Q. Do you recognize the handwriting of the shorthand reporter on that sheet? A. I thought it was Mr. McNamara's, until I heard his testimony to the contrary.

Q. But now, having heard his testimony, and having our minds centered upon the writing, does it enable you to indicate by any other means than guess whose handwriting it is? A. I could not say. If it is not Mr. McNamara's handwriting it is one of his assistants.

1677

Q. Any way this is an official record kept in the regular course of business by the Public Service Commission and produced by you subject to the subpoena duces tecum from the files of the Commission? A. Yes.

Q. I understand from what you stated before you were on the stand that it is your wish or the wish of the Commission that the paper be not marked and be returned to your files? A. Yes, it being an official record, I supplied your office with a copy of the record.

Mr. Mooney: The paper reads: On the left hand side "Case No. Conference, time commenced 10:40 A. M." and under-

1678 neath that "Adjourned to October 15th, 10:30 A. M."

At the top "October 6th, 1919,"—on the right hand side is the word "Commissioner," on the line with that is "Nixon, Delaney, Glennon, Barrett and Ryan." Then the words "Time adjourned 12 M."

Received as Defendant's Exhibit E.

Q. Have you produced pursuant to subpoena
1679 duces tecum certain communications addressed to the Public Service Commission? A. With the exception of No. 3, which I have not been able to locate in the short time I have had to make the search for it.

Mr. Mooney: I offer in evidence these communications.

Q. These are produced from the official files of the Public Service Commission pursuant to subpoena duces tecum? A. Yes, and are part of the
1680 records of the Commission which should only be marked by reference.

Mr. Matthews: If they are received at all there is no objection to having them read into the record or copies substituted.

Q. Will you furnish us copies? A. We will have copies made.

Mr. Matthews: I would like to examine it before they are received into the record. I object to the letters on the ground that they are irrelevant and immaterial.

1681

The Court: I don't see the materiality or relevance of these papers, Mr. Mooney.

Mr. Mooney: Is that intended as a ruling, your Honor, or is it intended as a request for an indication on my part as to the respect in which they are relevant?

The Court: The latter.

Mr. Mooney: In the first place, they relate to the question of the conference, and while they are remote in date, they bear upon the general features and the surroundings of the conference at which the letter 1682 was read.

The Court: Objection sustained. I think they are immaterial and irrelevant. I don't think they at all indicate anything in reference to the conference. You may mark them for identification.

Mr. Mooney: We except. Mark the copies in order that the originals may be returned to the files of the Public Service Commission.

Col. Caffey suggests that we just give the dates so we may identify them. 1683

The first one is a communication from Lindley M. Garrison to the Public Service Commission, dated January 3rd, 1919.

Marked for identification Defendant's Exhibit F.

Mr. Mooney: And the carbon copy is one addressed to Lindley M. Garrison and signed "James B. Walker, Secretary of the Commission, dated January 6th, 1919."

Marked "Defendant's Exhibit G for Iden tification."

1684

Mr. Mooney: The next is a communication written by Lindley M. Garrison, Receiver, addressed to James B. Walker, Secretary of the Public Service Commission, dated January 9th, 1919.

Marked Defendant's Exhibit H for identification.

By the Court:

Q. Now, during your service in the Public Service
1685 Commission, do you recall any meeting where there was a public hearing and then at some point the public hearing was closed and some private—I won't say private—but some hearing had not in public, some conference? I don't want to know the details, I just want to know whether you recall an occasion of that kind? A. Yes, I have known many instances where after public hearings conferences were had after the hearings were closed or adjourned.

Q. Can you state, if you know, what the character of the business was in regard to such in-
1686 stances? A. Informal conferences as a rule, I should say, there is no record kept of.

Q. Is there a record kept of the time when these conferences began or ended? A. No. There is no record, for the reason that there is no stenographer, taking these conferences,—simply a meeting for the purpose of suggesting ways and means to carry out a certain line of action.

Q. Now, it has been testified in this case that there was a public hearing, at a certain point the newspaper people were excluded and that the other people present then continued with certain sub-

1687

ject matters. Now, is there any regular course of business in such an instance as to the time being entered upon this slip that you have produced? A. The hearing before the Commission with respect to the conference was had at the time stated in the minutes. I heard no direction excluding reporters. I myself heard no such direction.

By the Court:

Q. Then you don't know what happened? A. I do not.

1688

NAT ELGOVSTEIN, a witness called in behalf of the defendant, being duly sworn, testifies as follows:

Direct Examination by Mr. Mooney:

Q. Are you attached to the Transit Construction Commission? A. Yes, sir.

Q. In what capacity? A. Clerk.

Q. Have you, pursuant to subpoena duces tecum 1689
served upon that Commission, produced certain papers from its files? A. Yes, sir.

Q. Will you please let me see those referred to in the subpoena?

(Witness hands papers to Mr. Mooney.)

Mr. Mooney: I offer in evidence these papers.

Mr. Matthews: I object to this one on the ground that it is irrelevant and immaterial.

1690

"Movement numbered 8, docket numbered 7344."

The Court: Objection sustained. Mark your paper for identification.

Mr. Mooney: Your Honor understands the direction to which the paper is addressed?

The Court: Certainly I do.

Mr. Mooney: And it is not sustained because of the question of identification of signature or the filing of papers or anything

1691 of that kind?

The Court: Not at all. It is sustained on the merits as inadmissable testimony on materiality, on the merits.

Mr. Mooney: This should be marked for identification and the Court will observe that it consists of five pages and a pink extra slip and that copies may be substituted in the place thereof.

The Court: Certainly.

Mr. Mooney: In fact I presume that if the originals are returned—

1692 The Court: That copies will be furnished for the use of the Court.

The Witness: Yes.

Marked "Defendant's Exhibit I for Identification."

Mr. Mooney: I offer this second paper. This paper is produced also from the files of the Commission, which is now handed to you. This paper is a pink slip. Docket No. 7344, movement number 3, and in addition to the pink slip consists of 15 typewritten pages.

1693

Q. Now, Mr. Elgovstein, you will do the same as to this, the original being returned to you will you see that copies are furnished to the court? A. Yes, sir.

Mr. Mathews: I object to that as irrelevant and immaterial.

The Court: And the paper is marked for identification.

Mr. Mooney: This is excluded upon the same ground, and there is no point made that this paper or that paper should in chronology or in sequence have been offered first. 1694

The Court: No point is made as to that. It is excluded on the same grounds as before stated.

Mr. Mooney: I except.

Papers marked, "Defendant's Exhibits I and J for Identification."

Mr. Matthews: You offer them only Exhibits I and J?

Mr. Mooney: Yes.

1695

WILLIAM W. DRASTELL, a witsess called in behalf of the defendant, being duly sworn, testifies as follows:

Direct Examination by Mr. Mooney:

Q. You are a clerk connected with the office of the Clerk of the Court of General Sessions of the Peace of the County of New York, are you? A. I am.

1696

Q. And have you pursuant to subpoena duces tecum produced certain minutes of the Grand Jury? A. I have, sir.

Q. And are these minutes just produced by you, are they public records under and pursuant to an Order made by the Court constituting them public records? A. They are, sir.

Q. In other words, as distinguished from private minutes or minutes that are not to be published. Now, these minutes of the Grand Jury, in this instance, by special order of the Court, were made

1697 public?

Mr. Matthews: I object to that upon the ground that it is immaterial and irrelevant. On the ground that if there was any Court order the Court order should be proved.

Mr. Mooney: That, of course, would only make a second trip, if you should press that point.

The Court: I will take a statement in place of the Order.

1698 Q. These are severally indicated by the numbers upon their face, are they: 2160 constituting one volume— A. I don't know the volumes.

Q. And the other is 2024? A. Yes.

Q. One of these which is numbered as 2024 is not in a bound volume and is not endorsed with an endorsement on the back? A. Yes.

Q. The date appearing on the first page of the volume is January 24, 1908, isn't it? A. Yes, sir.

Q. And the second volume, 2024, is a binder and commences with page 5681, March 20th, 1908, is that correct? A. Yes, sir.

Q. Now, these two volumes are inscribed "Grand

1699

Jury Minutes 1908, Street Railway Investigation," are they? A. They are.

Q. And the volume, 2160, is inscribed "People of the State of New York vs. John Doe and Others, Metropolitan Street Railway," and the first thing therein is on November 13th, 1907, et seq. Is that correct? A. Yes, sir.

Mr. Mooney: I think these are sufficiently identified for our purposes. I don't know of any other means of identification in regard to these minutes. Have you any suggestion to make? I ask that they be given a number.

1700

Mr. Matthews: For identification.

Mr. Mooney: I would like to have that one, 2024, marked for identification.

Marked "Defendant's Exhibit K for Identification."

Mr. Mooney: The second volume should be marked with the next alphabetical designation, which should be L.

Marked, "Defendant's Exhibit L for Identification."

1701

Mr. Mooney: The volume 2160 with the next alphabetical designation, which should be M.

Marked, "Defendant's Exhibit M for Identification."

Mr. Mooney: My associate calls my attention to the fact that the numbers are not a clear indication of the chronology. This is to prevent confusion.

Mr. Matthews: I have no knowledge of the purpose of having these marked. By no thing that I have stated do I intend in

1702 any way to indicate that the Government waives any objection it might have to the receipt of these documents.

The Court: I will let them be marked for identification. Do you offer them?

Mr. Mooney: What I have in mind is something more useful than that, a compendium has been made of those matters which are material to this controversy and the intention is to offer that compendium and just have the compendium rest upon the basis of these Grand Jury minutes.

1703 The Court: For the purpose of expedition I am satisfied that the compendium be offered.

Mr. Matthews: If the Court please, when the conpendium is offered I shall want in the record the basis upon which the conpendium rests, as Mr. Mooney says.

Mr. Mooney: I think that will all come up in regular order.

The Court: Here convened to meet at 10:30, June 9th, 1920.

1704 ———

New York, June 9th, 1920.
10:30 A. M.

Met pursuant to adjournment.

Present—SAME COUNSEL as before.

Mr. Mooney: I will offer for identification the official publication of the investigation of the Interborough Metropolitan Company and the Brooklyn Rapid Transit

Company under Section 45 and 48 of the Public Service law, pursuant to special resolution of the Public Service Commission for the First District, adopted in session held at 320 Broadway, City of New York, on Thursday, July 18th, 1907, published by the official authority and consisting of six volumes, now produced. For the purposes of convenience, this investigation is commonly known as the Ivins Investigation. 1705

Mr. Matthews: You ask to have those marked for identification

Mr. Mooney: The six volumes as one exhibit. 1706

Marked "For Identification, Defendant's Exhibit N."

Mr. Mooney: I offer for identification four volumes known as 3-4-5 and 6, of minutes and testimony of the Joint Legislative Committee appointed to investigate the Public Service Commission, authorized by Joint Resolution of January 21st, 1915, and continued by Joint Resolution of April 24th, 1915, and further continued by Joint Resolution of January 20th, 1916, and March 6th, 1916, transmitted to the Legislature March 30th, 1916, published by authority. This investigation is commonly known as the Thompson Investigation. 1707

Volumes 1 and 2 are not offered, for the reason that they contain the report, and my present offer is only concerned with the testimony and documents which are contained in these four volumes. I ask that these four volumes be marked as one exhibit.

1708 Marked "For identification, Defendant's Exhibit Q."

Mr. Matthews: I do not want it to be understood in any sense that I am accepting Mr. Mooney's statement that these are official, are published by official authority, or to waive any right to object to the introduction in evidence of any of the exhibits being marked for identification, on any ground whatsoever. I shall object. I am fairly certain now that these documents that are being marked, are not only irrelevant and
1709 immaterial, but are also absolutely incompetent.

Mr. Mooney: On the question of incompetency, your Honor, I hope my learned friend is not going to press that, because that would require very considerable testimony. We would use two or three days, probably, going through all of those steps which would assure me, in the same way that he would want to be assured, of the different bases upon which the report might rest. I shall accept the challenge, if he in-
1710 sists upon that.

The Court: I am desirous of expediting the proceeding. In that matter I shall overrule the objection so far as it concerns the competency.

Mr. Caffey: Not only competency. Hearsay and irrelevancy.

The Court: So far as that is concerned I shall take these books as if they were the originals—

Mr. Caffey: As if they were genuine originals?

The Court: Oh, yes.

Mr. Caffey: There is a difference between originals and competency. They are absolutely incompetent whether they are genuine originals or not. 1711

The Court: That clarifies the objection Mr. Matthews made. That is perfectly all right. I assume that was the point which you had in mind when the question of competency was raised.

Mr. Caffey: Absolutely.

Mr. Matthews: That is the point I had in mind. I didnt want it to be understood, because those books are official, that the hearsay rule would not apply to them, the same as to any other writing. 1712

The Court: Of course, I thought an objection was made to the character of the reports.

Mr. Caffey: No, not at all. They are the rankest hearsay.

The Court: There is no question as to the genuineness of the documents, that they are true copies of the proceedings. I understand the point as to incompetency is directed to the proposition that the subject matter is hearsay. 1713

Mr. Mooney: As to that, your Honor, it might be advisable for me to say a word. Because, we have proceeded upon a condensation of the testimony which is to be offered here, and we have condensed it to the last degree.

My learned friend—Of course this will not come up ultimately until the offer is made, but as the Comptroller is detained for a few minutes on absolutely imperative public business, while we are awaiting him,

1714 if your Honor will consider the discussion appropriate now, it might be advisable to deal with that:

A public investigation conducted under the authority of the Legislature of the State of New York is not in any sense hearsay. It is a matter of public knowledge, in the same way that certain facts are taken into judicial knowledge of a different class and character. The mere fact and circumstance that a proceeding is conducted under the authority of the legislature is for the pur-

1715 pose of informing the public with respect to the matters inquired of; and it is in that connection, that we propose to lay the foundation for the knowledge possessed by the Comptroller, first as one of the public and secondly in his official capacity, by reason of the investigations thus authorized and empowered by the State of New York.

To say that a proceeding is hearsay, when the very purpose of conducting it is to inform the public so that the public may know these facts and act upon the information that is obtained, is a very contradiction in

1716 terms.

There is a second aspect, with reference to this matter, that I would like to impress upon the attention of the Court, which applies to this class of evidence as well as to others and should, in our view, very much broaden the scope while justifying the condensation, and it is this: This proceeding is, in its nature, and by its description, a summary proceeding, and there is applicable to it different rules of evidence than those which exists and persist in common

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law courts. The intention being that the matter is to be summarily inquired into and that the best evidence which is reasonably available shall be produced in the proceeding.

I need not dilate upon the last proposition at this time, but it is one which is very likely to be lost sight of if it is not impressed upon the attention of the Court.

There is no question, I think, after reading the authorities, but that in this kind of an inquiry the evidence is not to be weighed 1718
according to those tests which are applicable in ordinary forums.

I have expressed myself now so that your Honor will have my views before you when you come to rule upon the testimony when it is offered.

CHARLES L. CRAIG, the defendant, called in his own behalf, being duly sworn, testifies as follows:

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Direct Examination by Mr. Mooney:

Q. You are the Comptroller of the City of New York? A. I am.

Q. And when were you elected to office? A. In the fall of 1917, November, 1917, for a term of four years, beginning January 1st, 1918.

Q. And you qualified and entered upon the discharge of your duties as such, and have been discharging your duties since that date up to the present? A. Yes.

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Q. Are you, as Comptroller, and by virtue of your office as such, a member of the Board of Estimate and Apportionment of the City of New York? A. Yes.

Q. And are your powers and duties as Comptroller set forth in the Charter of the City of New York? A. Well, not entirely. They are partly in the the Charter and partly in various Statutes that supplement the Charter, in general.

Q. And is the same thing true with respect to the powers and duties of the Board of Estimate
1721 and Apportionment of the City of New York? A. To a lessor degree.

Mr. Mooney: I rather assume that it will be convenient for the use of the Court that a compendium of the sections of the Charter be presented and marked as part of the record. The Court will take notice of the Charter as it is a general act of the State of New York, and I submit that it need not be completed at any specified date, as it is nothing more than a compilation. Is that agreeable?

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Mr. Caffey: The Court can take judicial notice.

Mr. Mooney: We have a very large record already, it would be very much better to have this in the form of a compendium than in the form of a brief. It will load the brief.

The Court: I am entirely agreeable, Mr. Mooney, do you mean to include in that general and special statutes outside the charter, directly relating to the duties and powers of the Comptroller of the City of New York?

Mr. Mooney: In a general way, yes, sir.

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Q. There are general statutes outside the Charter directly relating to the duties and powers of the Comptroller and the Board of Estimate and Apportionment of the City of New York? A. Yes.

Q. You are a member of the Bar, Mr. Craig, are you? A. I am.

Q. And you are a member of the Bar of this Court, are you? A. Yes.

Q. When were you admitted first as a member of the Bar? A. Sometime in 1903.

Q. That is in the State Court? A. Yes.

Q. Were you a graduate of any school or university? A. Columbia University, School of Law. 1724

Q. And were you in active practice in the City of New York up to the time you became Comptroller of the City of New York? A. I was.

Q. In what connection, with whom? A. Well, I practiced alone. For a number of years I was associated with Hoadly, Lauterbach & Johnson, and handled practically all their important trial work and more complicated litigations; and after sometime in 1913, or the early part of 1914, James A. Foley, who is the present Surrogate, and myself, had offices together at 66 Broadway. There was not a partnership. There were many things in which 1725 we were interested and many things of his in which I had no interest and many things of mine in which he had no interest. I don't know how that answers your question. My practice at the Bar covered practically every field except admiralty.

Q. And did you have a practice in everything excepting admiralty? A. I got into patent litigation now and then, but in that I usually had help.

Q. Did your practice include a substantial amount of receiverships? A. Yes.

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Q. Did you acquire therein knowledge and experience with respect to the development of facts from original sources? A. Yes.

Q. And was the result of your experience with respect to receiverships that any workable knowledge could be acquired execept from original sources?

Mr. Caffey: I object to that.

The Court: Objection sustained.

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Q. Well, will you state what knowledge and experience you acquired as a member of the Bar with respect to the ascertainment of facts in receivership matters and from what sources such facts could be obtained?

Mr. Caffey: Objected to as incompetent and irrelevant.

The Court: Objection sustained.

Mr. Mooney: I except.

I am not going to press these questions, your Honor. The Government can take the responsibility of its course. I had rather as-

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sumed that a contempt proceeding was for the purpose of arriving at the knowledge, the understanding and the position of the defendant who is charged with the act at the time he committed it. But, apparently, my learned friends are actuated by the thought that the way to try a contempt proceeding is to exclude as much of the proof outside of the letter as possible. They must take that responsibility. I am not going to struggle beyond the requirements of my position.

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Q. Did the City of New York have an interest in the matter of the Traction Companies? A. It has a very large financial interest, and, of course, has a very large public interest.

Q. We will take those in their several aspects: Will you state, in general, the figures of the financial interest of the City of New York, the direct financial interest? A. The city's investment in the so-called rapid transit lines at the present time is represented by appropriations that have been authorized to the extent of a little less than $300,000,000, of which actual expenditures have been made of something around $285,000,000. I can supply the exact figures to any given date that is required. Besides that the City is committed to the building of certain rapid transit lines: Specifically what are known as Contracts 3 and 4. Number 3 being with the Interborough Rapid Transit Company, and number 4 being with the New York Municipal Railways, called the Brooklyn, the B. R. T. Those two being known as the Dual Subway Contracts. The unfinished routes, that is the parts for which no appropriation has been yet made, for which no contracts for construction have yet been awarded, as nearly as it can be estimated, at present, entail an obligation upon the City of upwards of $75,000,000, for their completion.

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Q. And these figures that you are now giving me, in round numbers, which is all that we require for the present purpose, are substantially as they existed on October 6th, 1919, are they? A. Well, there has been no change in the gross liabilities. There has only been a shift from those things for which no appropriation has been made to those for

1732 which appropriations have been made and expenditures actually incurred.

The $75,000,000 I mentioned has to be added to that figure of about $300,000.000. About $375,000,000 is the extent of the City's interest in the enterprise, as represented by actual outlay, by appropriation and by provisions in the contracts themselves, yet to be carried into effect.

Q. Now, do these vast sums— A. Besides that, the City has an interest in other forms of transportation, such as surface lines and bridge lines—

1733 Q. Illustrate, please, the last statement of yours for ordinary comprehension, by reference to the particular sections. A. Well, an illustration of the surface lines would be the line through Central Park at 86th Street, which is owned by the City of New York, built by the City of New York, and the lines over the Williamsburg Bridge and the lines on the 59th Street Bridge the tracks and terminals of which are the property of the City of New York.

Q. And those are intimately related with the rest of the traction system of the City of New York?

1734 A. Yes.

Q. Now this vast sum which you have mentioned, has it a direct relation to the debt limit of the City of New York under the Constitution of the State of New York? A. Well, it has so direct a relation to it that every appropriation for rapid transit, subway construction, or other rapid transit construction must be provided for by the issue of public stock, every dollar of which is a charge against the debt incurring power of the City, or the so-called debt limit.

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Q. So that the success or the non-success, or the value, or the non-value of the Rapid Transit System in the City of New York has a direct effect upon the financial activities of the City of New York in other directions, has it, by reason of the debt limit provision of the Constitution? A. Yes, at all times.

Q. Will you describe, briefly, the other interests which the City has in the question of rapid transit? A. Well, I suppose by that you mean the public questions which were involved and which led to the authorization of these various railroad lines. 1736 Now, in its origin, one of the questions there, one of the chief questions was the congestion of population on the Island of Manhattan, and the paucity of transportation facilities to other Boroughs, which would together form the whole city of Greater New York. There was the question of providing some method of scattering that population so as to relieve the congestion in Manhattan and at the same time to provide transportation to the other parts of the City where the population is apt to go and to thus provide for the development on the other parts of the City. Those are the 1737 main consideration which lead to the whole rapid transit enterprise. In connection with that, the question of fares was intimately connected from the beginning to the end. All kinds of propositions were discussed, as for example, the system of zoning fares, where a small fare was to be charged for shorter hauls and graduated or increased fare for the longer hauls. For example, a five cent fare in the Borough of Manhattan, and five cents to some point to be arbitrarily fixed in Brooklyn,

1738 the Bronx and Queens and an additional fare to some other and more distant location.

The difficulty with that, as developed in the discussion of this subject, was the natural human tendency to avail itself of the five cent fare, and to defeat the very purpose of scattering the population congested on Manhattan Island. Because the attractiveness of the five-cent fare as against an increased fare, which had to be provided for the more distant points if the zoning system was authorized would tend to keep the population with-
1739 in the five-cent zone, and prevent its being extended to those parts of the City where there was ample room for habitation and which, at that time, has not been developed. It was principles of that kind and discussions of that character, over a period of, not only of months but of years, that resulted in the determination that the only policy that the City could safely and securely and permanently embark upon was one that fixed the rate of fare, and fixed a rate of fare which was expressly agreed upon, and one which should not in any event exceed five cents. And it was in connection with that
1740 general view of the facts that the routes, the so-called Dual Subway System were laid out, so as to reach all of the undeveloped parts of the other Boroughs, and the City practically divided between the two companies. That is, while it is referred to as the Dual System, there is only one system. There is no duality about it. It is the Brooklyn Rapid Transit and the Interborough Rapid Transit, the lines of which constitute the rapid transit system. There are three great main lines in the Bronx. There are two lines now in Queens, and there are a great number of them in

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Brooklyn. Of course, there have been a great number of main trunk lines added in Manhattan. I don't know whether you are interested in my specifying those lines or not. It would be a very simple matter to do it, if you want me to go into it.

Q. I think that appears from the evidence already introduced by the Government, but I will ask you whether there are provisions for the purpose of presenting a bird's eye view of the matter—whether there are provisions in the contracts between the rapid transit lines, or some of them, and 1742
the City of New York, whereby the contract rights are established between the railway companies and the City, which the Board of Estimate and Apportionment claims the right to enforce and control as the legislative branch of the City of New York?

Mr. Caffey: I object to that as incompetent.

The Court: I don't see the point

Mr. Caffey: It is irrelevant as well.

The Court: The question asked the witness is merely whether that is claimed. Under the circumstances I will allow the 1743
question.

A. Will you please read the question?

Q. (Question read.) A. Yes, with qualifications.

Q. Yes. I am not attempting by my question to cover the whole subject. And I assume that you are not attempting by your answer to cover the whole subject? A. Whether the Board of Estimate claims it is the legislative branch or otherwise is a question. I didn't want to go beyond the ruling and volunteer an answer which appears to be more

1744 than yes or no. I can explain more fully, if you wish me to do so.

Q. I wish you would, briefly.

Mr. Caffey: I object to that as utterly irrelevant, as well as incompetent.

The Court: I have no desire to shut you off, but I don't see what is the point.

Mr. Mooney: The point is, your Honor, the standpoint from which the defendant wrote his letter. A man cannot just sit
1745 down and write a letter if he has no surroundings or bearings from which to write it. If the man was in fact in the green grocery business and sat down and wrote a letter to the President of the United States on a scientific subject it would be quite ridiculous, and it would be very likely to receive the scorn and humor of the multitude. If the chief financial officer of the City, in a matter in which the City is largely interested, writes a letter, he should surely be allowed to explain the standpoint
1746 which he occupied and from which he wrote his letter. In other words, if we were even considering the matter as a contract, we should allow the surroundings and circumstances, the surrounding circumstances and the surrounding bearings.

The Court: I understand that, but I do not understand the purport of this particular question.

Mr. Mooney: I am not going to struggle about it. We are all well advised of the fact, as well as the witness, that his answer is

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incomplete, but I am perfectly willing to leave it that way.

The Court: Objection sustained. The City of New York has important and substantial interests, as outlined by the witness. In his capacity as a public officer, in the office he holds, and as a member of the Board of Estimate and Apportionment, which is an office of very high official responsibility he was highly interested in the subject matter of transportation, which is a most important one, that the witness was highly interested in 1748
the so-called transportation facilities on October 6th, 1919, which were in the hands of the receivers appointed by this Court.

The Witness: Mr. Mooney, I don't think that I have finished my answer to your question. I don't think it went any further than in regard to the rapid transit lines. I think you intended that I should include also the surface lines. If I may add that much, if that comes within the ruling.

The Court: Certainly.

The Witness: The City's interest in the 1749
surface lines is that all of them are occupying the streets of the City of New York, many of them under franchises granted by the local authorities, and many of them under legislative grant, made at a time prior to the Amendment of the Constitution of 1875, when the legislature had the power to do that.

Now, in every instance, the municipal authorities are interested in any modification or in the proper exercise of the existing franchises. Besides that, the existing sur-

1750 face lines, and the inadequacy of the service provided by them, was one of the questions discussed, and it was understood at the time the rapid transit enterprises were embarked upon, that they would have a vital effect upon the surface lines operated under these franchises, many of them a half century or more old.

Q. Now, was there at the time of the writing of the letter complained of pending before the Board
1751 of Estimate and Apportionment applications for the increase of fares by or from some of the railroad companies? A. My recollection is there was an application pending from practically every line in the City, if not all of them, nearly all of them.

Q. Now, in addition to the interests which you have specified, was the City of New York interested to a very substantial degree in the question of taxes as affecting the railway systems? A. Certainly.

The Court: Let me interrupt. An an-
1752 swer made by the Comptroller might be amplified: On October 6th, 1919, there was no application on the part of the Receiver?

A. There were applications pending there on the part of the companies of whom receivers had been appointed.

The Court: That is what I want to get made clear.

A. I won't be sure at the moment that there were not applications made by the receivers, although they may have been received at a later time.

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Q. In other words, you don't know to what extent the receivers made themselves parties to the application? A. Yes. Those are matters that can be furnished for the record in precise form at any time if it is required. You asked a question about taxation.

Q. Yes, I will return to that. First, let us take up the question of unpaid taxes, franchise taxes and others. Was the City of New York interested in the solvency or insolvency of the railway companies forming the system, by reason of the taxes already accrued and then due to a very large amount? A. Yes. There is a very large amount of money due the city from a great number of companies; and while there may be some dispute as to whether some of the taxes could be collected, that is whether they are a lien upon the property as distinguished from the companies in personen, nevertheless they were involved in the solvency of the companies and a great many of the items due the city were those for which the city had no protection by way of liens against the properties. There is a great variety of claims that would be subordinate in any vent to the lien created mortgage upon the property.

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Q. And some for which a preference is claimed by the city? A. Yes, and undoubtedly exists.

Q. Then, is it a fair conclusion of the fact that the city was vitally interested in the solvency or insolvency, the successful or unsuccessful operation of the railroad companies from the standpoint of taxes? A. It was more than that, from a great many other points besides, that were more important than that.

Q. Name them briefly. A. Well, in relation to the question of taxation. An increase of fares is an

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indirect form of taxation. Franchises were granted and contracts made for the operation of the rapid transit lines. In the case of the rapid transit lines predicated upon this large investment that I mentioned in the City of New York, and companies were operated under leases. They are not franchises at all, they are mere contracts. Upon the condition that the operation should be carried on at a specified rate of fare. There are contract provisions that determine how the gross receipts from the various companies shall be dis-
1757 tributed, to what purposes they shall be applied, and the Rapid Transit Act contemplates the retirement of all Rapid Transit bonds, even those which are issued by the City of New York for rapid transit purposes out of the sinking funds to be created out of the fare. That, however, is not the entire recourse of the purchasers of the bonds of the City of New York. In the meantime they are entitled to have the annual sinking fund and interest requirements provided out of the taxation.

The proposed increase in fares in a very definite sense was a proposition to levy an additional tax
1758 on the City of New York of about $100,000,000 a year; and that arose from the fact that while the first applications for a modification of the franchise and contract provisions was merely to provide an increase to 7 cents, as matters were pending and the discussion ran on, indications were clearly made that 7 cents would not be sufficient, that 8 cents would be required if the contentions of those back of the applications were sustained, and that even a 10-cent fare would be required.

Now a 10-cent fare on these various lines which have been referred to on the basis as it was in the year ending June 30th, 1919, would mean taking

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from the inhabitants of the City of New York and those who were within the city from time to time, at least $100,000,000 a year in addition to what they had heretofore paid for the same transportation service.

When the municipal authorities were called upon to authorize the franchise holding and operating companies to exact this additional charge from the inhabitants and from people who were within the city from time to time, they practically called upon the municipal authorities to permit them to exact or to collect at least $100,000,000 a year in addition 1760
to what they were authorized under their contracts to collect; and it was a question as to whether or not if that amount of money was to be provided by the City of New York, it should not be provided in some other manner, by some other form of financing in which the city would be interested, or some other method of control or operation other than that heretofore provided, or by some manner of taxation.

The sum and substance of it, however, was that it was an application broadly stated to the municipal authorities to permit the collection of $100,- 1761
000,000 a year in addition to the sum that the contracts theretofore authorized by the municipal authorities permitted.

Q. Now, in the situation that then existed, was a resolution introduced in the Board of Estimate and Apportionment of the City of New York to authorize the application for the appointment of a co-receiver in the proceedings then pending in the United States District Court? A. There was such a resolution introduced.

Q. By whom was it introduced? A. My recollection is that I introduced it.

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Q. And who was the receiver suggested to be appointed? A. The Comptroller of the City of New York.

Q. Yourself? A. Well, whoever might be the Comptroller from time to time.

Q. And was that coupled with a proffer that the Comptroller would make no charge for his services? A. It was offered with distinct limitation and stipulation in regard to it.

Q. And was anyone designated to present that resolution when made to the Court? A. The
1763 Corporation Counsel was authorized by the resolution, as I recollect it, to make the proper application to the Court to get that relief.

Q. Now, while we are on that point, I will ask you whether that authorization to the Corporation Counsel to your knowledge was contained in the resolution. We have the resolution in evidence, but I want to know whether— A. I have a very distinct recollection that it was. In fact, I will go further than that. My recollection is I drew the resolution.

Q. While we are on that point, so as not to lose
1764 sight of it, I want to ask you whether the Corporation Counsel of the City of New York, except when thus designated, is either present in person or by any designated assistant, in the performance of your duties as Comptroller, or in the performance of the acts and duties of the Board of Estimate and Apportionment?

Mr. Caffey: I don't understand that. I object to it as incompetent. In the first place it is irrelevant.

The Court: Question allowed.

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A. No, but I would like to add—

Q. You may. A. Neither the Corporation Counsel nor any of his assistants ever attends any meeting of the Board of Estimate and Apportionment, nor is he ever requested to attend unless a specific matter comes up during the meeting, and he is sent for.

Q. Your answer then will stand that neither the Corporation Counsel of the City of New York nor any of his assistants is ever present in person or performs any service for the Comptroller except upon the request and authorization of the Comptroller? A. I wouldn't say that the Corporation Counsel has not assumed to do such a thing without the knowledge of the Comptroller and perhaps without the knowledge of the Board of Estimate and Apportionment. But I have stated what the relation is.

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Q. I just want the facts as they existed from time to time and in actual practice without referring to legal refinements. In other words, so that we may have a common conception in the suit here: There is an official representative in the Mayor's office of the Corporation Counsel, but that does not apply to the case of the Comptroller, nor to the Board of Estimate and Apportionment? A. No. May I add there is a provision in the charter, that in certain specified cases service of papers in the beginning of actions or of proceedings may be served upon the Corporation Counsel, although their service is also required upon the Comptroller and other officers. And in common practice such papers are served upon the Comptroller although served upon the Corporation Counsel. The law requires it. When received by the Comptroller they are transmitted to the Corporation Counsel with such directions as the case may require.

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Q. So that we may get this record quite plain to those not quite as well acquainted with it, as some of us here are: During the last generation there has been guardedness, has there not, as between the overlapping of the functions of the Corporation Counsel and the Comptroller, which has been the subject of many acts of the Legislature to guard a separation, so far as could be of the functions of the two officers? A. That is true.

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Mr. Mathews: I object to that as entirely immeraterial.

The Court: Objection sustained.

Mr. Mooney: Of course Mr. Mathews has not been here as long as some of us and hence has no recollection of it. This has been a fight for a generation.

I except to the Court's ruling.

A. There is one specific thing I would like to cover.

Q. No, we will just leave it there. When any one wants to read this they will ask what we meant by it and then they will go to look it up. Now, did you know of the passage of this resolution by the Board of Estimate and Apportionment by being present in person at the time it was passed? A. It was passed with the aid of my vote.

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Q. And does the Comptroller of the City of New York, as a matter of fact, have a certain number of votes in the Board of Estimate and Apportionment? A. He has three.

Q. And are there certain matters under the charter that cannot be passed without the presence and the vote of the Comptroller? A. There are a number of matters in which the Comptroller has

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an absolute power of veto and dissent and which cannot be passed over his opposition.

Q. And are these matters principally affecting the finances of the City? A. They are all provisions of law chiefly intended to safe-guard the people against inprovident propositions affecting them financially.

Q. Now, in the course of time, did you know that the resolution of the Board of Estimate and Apportionment, to which reference has been made, was presented to his Honor, Judge Mayer? A. I was so informed.

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Q. In the course of your official duties? A. Yes.

Q. And did you know that co-incident therewith there was—or substantially co-incident therewith there was presented and considered an application for intervention? A. By whom?

Q. Intervention by the City of New York, without describing it. Wait until I get it exact—

The Court: Let him say, if that is so.

A. The reason I hesitated to answer the question was I knew no authorization had ever been given by the municipal authorities for any application to intervene on behalf of the City of New York, but that I had been informed that an application of that character, that general character had been made by the Public Service Commission of the State of New York for the First District.

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By the Court:

Q. In the B. R. T. matter? A. In one or two or more cases.

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Mr. Mooney: I think my question was not quite precise. It was not finished. I will return to it.

Q. I ask you whether, authorized or not by the Board of Estimate and Apportionment, you knew substantially that it was made by the Public Service Commission for the First District in the name and on behalf of the City of New York. That is to say, an application had been made in behalf of the City of New York. Do you know that fact?

1775 A. I was informed that they had made an application of that general character.

Mr. Mathews: I understand your questions as to the knowledge of this witness apply to his knowledge on or before October 6th?

Mr. Mooney: Why, of course.

By Mr. Mathews:

Q. Your answers had that in mind? A. Yes, I knew of these things within minutes after it was

1776 done, sometimes within twenty-four hours, usually within a few minutes after they had transpired.

By Mr. Mooney:

Q. Will you tell us in the official life of New York City, who is the most active and diligent purveyor of news from one branch of the government to another, and from one department to another, and one Court to the other. Are they the reporters? A. I don't know of any that are more diligent.

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The Court: Well, as I have been sitting here for the last month or so I have been wondering whether we had forgotten them.

Q. Now, do you know at what time and under what circumstances those applications came on to be heard, that is to say when they came on to be heard, were they considered together? A. That is my recollection.

Q. And that it came up in connection with, or at a time when the Court had under consideration the question of the appointment of a permanent receiver? A. Yes. 1778

Q. Did you know that it had been suggested at that time by others than yourself and the Board of Estimate and Apportionment, that Mr. Garrison, who was the temporary receiver, should be made permanent receiver? A. Yes.

Q. And did you know generally the conclusions that were arrived at and announced by the Court on those three heads, viz: the application for the appointment of a receiver, the application for intervention and the application for the appointment of Mr. Garrison as permanent receiver? A. Yes.

Q. And did you have these facts in your mind when you wrote the letter of October 6th, 1919? A. I did. 1779

Q. And was each and all of them an important factor in your mind in composing and indicting and sending the letter? A. All. Some more and some less than others.

Q. Now, before the writing and sending of that letter, did you receive more than one communication from Mr. Nixon? A. I did.

Q. And one of them has been spread upon the record as a part of the printed record of the con-

1780 ference before Commissioner Nixon on October 6th, 1919, but the other one, which has been identified by the Commissioner, when a witness on this stand, has been marked No. A, and I hand it to you and ask you whether you recognize the receipt stamp as that of your office? A. I do.

Q. And have you a personal recollection yourself of when this communication came into your hands? I have.

Q. And when did it come into your hands? A. On the morning of Monday, October the 6th.

1781 Q. And the communication itself is dated October 3rd. Is that so? A. Yes.

Q. For the purpose of the record, does the time stamp so indicate? A. The time stamp indicates the date, and also indicates the time, but I wouldn't profess to interpret the way that dial works. I know as a matter of actual recollection, that letter was received by me on Monday morning, October 6th, after I arrived at the office, and before the letter I wrote to Nixon was dictated.

Q. Well, we won't go into the question of the dial. The date, October 6th, 1919, does appear

1782 right on the face of the stamp, doesn't it? A. It does.

Q. Do you know whether that receipt stamp in your office, as applicable to correspondence, is imprinted on the correspondence before it reaches your hand, or when it goes from your hands into that of the stenographer, or other persons to be filed? A. That would depend upon whether the communication was enclosed in an envelop marked "personal." If it is enclosed in an envelope marked "personal," the envelope will be brought to me with the actual time stamped on the envelope. If the let-

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ter is opened, then the direction is given to stamp the letter, so that the actual time stamped on the letter may be a later time than it is actually received. In that kind of a case sometimes the envelope is preserved. More generally they are not.

Q. Now, dealing with this question of these communications from the Commissioner, his attention was called, when he was here as a witness for the Government, to the statement made by him, personally, during the course of that conference, that he had no power, to which he replied in substance, as I recall it"Well, that would make no difference 1784
if I had the power." Now, I want to know what was in your mind when you received those communications, and replied to them, on the subject of whether the Commissioner had any actual power to carry out the purposes of the conference? A. I was very distinctly of the opinion that he had no such power.

Q. And did you know up to within a very few weeks, whether any one has ever asserted that he had the power?

Mr. Mathews: I object to that as irrele- 1785
vant and immaterial and because it comes down to beyond October 6th.

The Court: Objection sustained. The Comptroller has stated that in his opinion the Public Service Commission had no power. That covers the point.

Mr. Mooney: I am asking it, your Honor, because the Commissioner was called as a witness by the Government, and there are certain parts of the Commissioner's testimony as to which the good faith and the bias of the Commissioner is material.

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The Court: To make it more plain: Whatever the different views as to the power may be, the Court entertains no doubt that the witness was sincerely of the opinion that the Public Service Commissioner had no power. Now, whether somebody else thought he had the power seems to be utterly immaterial.

Mr. Mooney: I understand, of course, what your Honor has stated, but it is not upon the point which I am endeavoring to

1787 direct your attention to, and which my learned friend does not seem to appreciate either.

I am dealing now with the question of a witness called by the Government, namely, Mr. Nixon, whose testimony is, of course, assumed to be weighed in the balance.

The Court: I don't think Mr. Nixon goes into that at all.

Mr. Mooney: I want to show that neither Mr. Nixon, nor anybody else, until a very recent date, when self interest or official over-zeal has promoted them, has ever as-

1788 serted that the Public Service Commission had any power to perform the acts which were then under consideration.

The Court: I regard that as immaterial.

Q. Now, did you regard this letter—and I am particularly directing attention to the letter of October 3rd, 1919, from the Commissioner to you—as an unusual and extraordinary communication? A. I did.

Q. And did it have a substantial effect upon your mind in the drafting of your reply? A. My recol-

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lection is that it was the receipt of that letter which impelled me to make the reply. I was in doubt as to whether or not any reply would have been made to the general letter that he had sent out, particularly because being pressed with a great many public matters and not having the time to make a reply, and because I was in doubt as to whether any reply was necessary. I was in that state of mind when I received this letter on the morning of October 6th. That determined me to make a reply to it.

1790

By the Court:

Q. By the general letter, you mean— A. The letter dated October 1st, that was sent to all members of the Board of Estimate, so I am told.

Mr. Matthews: Marked Government's Exhibit 1.

By Mr. Mooney:

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Q. In other words you are referring to the letter which is in the printed book, and which is described as an initial letter? A. I assume that is the one.

Q. Now, that Exhibit A, before you, which is a separate letter, and which you have described, will you state, generally, the impression and result upon your mind made by this letter, Exhibit A, which afterwards found expression in substance, and the extent to which it found expression in your reply? A. In the first place, you will bear in mind that this letter was received at a time when the heaviest work that the Comptroller has to do during the

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whole year has to be performed. That is the closing up of the annual budget, which carries all appropriations for all purposes for the following year. That is, the duty is imposed by the Charter upon the Board of Estimate and Apportionment, but it is one that is generally referred to a committee of that Board, called the Committee on Finance and Budget, of which the Comptroller is Chairman. Under the Statute that budget must be filed on or before October 10th. The sixth was Monday, so that we had Tuesday, the 7th, Wednes-

1793 day, the 8th, Thursday, the 9th, and Friday, the 10th, within which to complete that work. Besides which we had a regular meeting of the Board of Estimate and Apportionment to be looked after on the morning of Friday, the 10th, and I am not also sure but that we had a regular meeting of the Commissioners of the Sinking Fund on Thursday, the 9th, although there may not have been that meeting that week. Now, at that stage of the budget making process there was an overwhelming mass of materials and controverted questions which had to be determined and have to be determined with

1794 expedition because the printing of the budget alone is a task of great magnitude, and the printers' proofs have constantly to be revised, and the budget total mathematically checked and balanced before it can be closed on the night of the 10th, or sometime on the day of the 10th.

There were a number of matters in regard to which hearings had to be granted before the Committee, and some of them had been set down for this very day, Monday, October 6th. In fact, I don't think it is any exaggeration to say we heard upwards of 75 institutions during that day by oral

argument—it was a personal proceeding—they 1795
were personally present. Besides that there were
the appropriations for a great many other public
purposes, all of which I can specify in detail by
reference to the Committee action of that day.
Now, that Committee is due to go in session at
10:30 in the morning, but before calling the Com-
mittee to order the Comptroller has to look after
every kind of an emergency which has developed
anywhere between the end of the preceding week
and that hour Monday morning, which raised ques-
tions that must be disposed of by the Comptroller, 1796
not budget matters at all. I am talking about or-
dinary things that go wrong and cannot wait and
that can only be set right by the Comptroller.
There are common matters—many matters that
ave to be set right in the early hours of every
ay. So I had before me, among those things I
as considering, this letter of Commissioner
ixon, dated the first of October, and while I was
nsidering that, I received this letter which has
en marked Exhibit A, or identified as Exhibit
dated the 3rd day of October, written by the
mmissioner to me, but, as I say, actually re- 1797
ved by me sometime before 10 o'clock on Mon-
morning, and it was that which impelled me
make a reply which would cover both letters.
, I don't know how far you want me to go
detail or explanation of the whole thing at
time—whether you want the letter to be de-
.

What I wanted to do was to get the impress
our mind of this particular letter, if it made
arate impress, and whether you had in mind
nusual aspect presented by the Commissioner,

1798 or your feelings or relations to him, official or otherwise, and as to whether the receipt of that letter from him made a distinct or definite impression upon your mind, which found result in the letter which you wrote? A. Well, it certainly did. My question was whether you wanted me to proceed or to wait for another question.

Q. Proceed, please. A. You will observe that this is in evidence, so that I may refer to the contents of it.

Q. Yes, that is agreed, isn't it? It is marked
1799 "A". Let us make sure of it.

Mr. Matthews: It is in evidence.

Q. You may proceed. This letter marked "A". A. (Witness continuing) In the first place, so far as my relations with Commissioner Nixon are concerned, they were entirely of an official character. There had never been any personal or official friction, or anything of that kind. We entertain different views about public matters, but they have never been permitted by me to be made the subject
1800 of public criticism of him even though his views differed from mine on these things. There is no question of any personal relation involved in dealing with these facts.

You will observe in this letter which I received on October 6th, Commissioner Nixon says: "Owing to certain facts that developed at the hearing on Wednesday I was practically forced to call the conference to which you are invited Monday." Then he also said, "We cannot hope to get the full measure of concessions in advance. There must be negotiations." So that one of the things which struck my mind was that Commissioner Nixon per-

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mitted himself to be drawn into a situation where he had lost his power and freedom of action, and was proceeding practically under coercion, or, as he says, "Under force." He was forced to call this conference, because, as he says, "There must be negotiations." These are his own words, "there must be negotiations" so there must have been some kind of compelling force that compulsorily required negotiations, and in these negotiations concessions of some kind or other had to be made.

Now, I wanted to get the Commissioner where, if he was going to do anything affectively he would 1802
go about it in a way that he would get some results, and would not keep him all the while pursuing a course of action which was not only futile to my mind, but simply annoying the other public officers who had many other duties to perform in dealing with the real solution of these plans which were very vague and complicated.

I had in mind, of course, that there could not be any negotiations by the municipal authorities, so far at least as I was concerned, with the representatives of the traction interests except upon an absolutely equal footing. I had no intention of 1803
going in and sitting down around a table with the attorneys of the traction companies, whom I understood would be there, either from Nixon or from reporters who had advised me of the way this conference was going, except upon that basis. I had no intention of going into any conference with some of the traction attorneys unless we were afforded an absolutely equal footing with respect to the facts and information that they possessed. And I do not see how any public officer can enter a conference of that kind, unless he is in that same free and equal position.

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I had in my mind, also, the fact that before going before that conference—that I, as a public official, and the public authorities, who would ultimately be required to take action on that matter, that is, the Board of Estimate and Apportionment and the Comptroller, as a member of that Board, as well as Comptroller, should insist on getting the same kind of information that the companies themselves had and that their own attorneys had. That we should have the same kind of representation in the receivership. Those are the views I entertained
1805 at the time I received those two letters from Commissioner Nixon and at the time I wrote him my reply. And it was my view then, as it had been at the time that the Board of Estimate and Apportionment adopted the resolution calling for the appointment of a co-receiver, that the only way all the material facts and all the material information can be disclosed, not only to the Court under which the receivers were acting, but to the public authorities who had, in order to live up to their oaths of office, to have first hand information, was by the representation of the City in the re-
1806 ceivership, where, under the direction of the Court, a co-receiver could compel, whether the subordinate liked it or not, the opening up of every nook and every corner of every record and document of every kind which related to franchises, the affairs and the investments of these companies. That is a thing that has never been done up to the present time in the history of the City of New York. It was my view on the 6th of October, as it had been in the preceeding February, that it was only that kind of access to the original sources that could put us in that position, and access, with power under the control of the Court to require any subordinate,

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however recalcitrant, or unwilling he might be, to produce whatever there was in the way of information; and that that information could only be obtained by the City's representative being appointed a co-receiver so that he might, as receiver, obtain any information he desired. So that with that in view and desiring to go to Nixon where, if he could accomplish something, he could put the municipal authorities on the same footing as the traction companies, I wrote this letter of October 6th to him, using language I thought would get into the mind of Nixon, the necessity for that kind 1808
of co-operation, in the expectation that Nixon would gather from the letter that the real necessity that confronted him, and confronted everybody, for that matter, was the necessity that the public authorities be on an equal footing with those representing the traction interests, by way of having all the information that there was in the same way, the effective way, for whatever the effect of it might be, and that the first work that Nixon could do, as he seemed to be on terms of friendly negotiation, at any rate, with the attorneys of the traction companies, was to take the matter up with them 1809
from that point of view, if he was going to have any negotiation with them, and to say, "I think you ought to seriously consider the desire of the municipal authorities for the kind of information and the means of getting at that which they have heretofore asked"; and I haven't any doubt,—at lease, I hadn't any doubht at the time—that if Nixon had considered the letter in that manner, as it was intended to be considered by him, not read it to those attorneys as he seems to have done, but to have taken the subject matter of it and considered it himself, and then asked these attorneys

1810 of these various interests, all of whom, or nearly all of whom, were apppearing in the various receivership proceedings to take such steps as would put the municipal authorities on an equal footing, that he would do the greatest thing that anybody could hope to do in the way of getting these problems solved. In order that he might get the hang of the situation I went into some matters, I referred in my letter to some matters that lately had transpired before Nixon became Public Service Commissioner, so that he would have in as brief a
1811 compass as possible, the whole picture of the urgency and the necessity of the means by which that condition could be met.

That in general sort of way was what was intended to be accomplished in the preparation of the letter.

And I did, also, intend to bring to Mr. Nixon's mind that it seemed to be rather inconsiderate and thoughtless on his part to take the time of the fixing of the budget, the very closing of it—a most inopportune moment—to ask us to give up our other public duties to enter upon a conference that
1812 in any event at that stage would have been conducted with no result.

Q. As a matter of fact you could not have had, without violating your oaths of office, given up the time to that conference on that day could you? A. We could not possibly have done it as a physical matter, no.

Q. It was a physical impossibility? A. That was one of the reasons I had in mind in determining whether I would make any reply to the original letter. That was a fact so patent to everybody that the letter of October 1st required no answer. It was only when I got the letter of October 3rd,

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getting it on the morning of October 6th, that I thought that Nixon was entitled to an expression that would be of some help to him; and at the same time to keep him from ensnarling us in a situation which would be embarrassing and productive of no good result.

Q. In other words, you felt that he had singled you out by this communication for an expression which might not come from the others? A. Well, I don't know how sure—I didn't know that certainly, that he hadn't sent the letter, a letter similar to the tenor of that letter to other members 1814 of the Board. It is a very common thing to approach the different members of the Board separately, to create in their minds the impression that they are the only ones addressed on the particular subject, but I don't say that this identical process was employed.

Q. Now, I will follow along the course— A. There is one other thing I think I ought to add and that is, either by the letters themselves, or by statements given out by Commissioner Nixon, or sanctioned by him, the impression was in the minds of the press and certainly with the minds of the 1815 reporters, and I think so stated in the papers themselves, that Nixon had already obtained written propositions from a number, if not all, of these companies as to the so-called concessions they proposed to make.

He says in his letter, 'We cannot hope to get the full measure of concessions in advance." The implication of that sentence, that he had concessions, but they are not the full measure of concessions, and the statements that were in the news items were that he had these things in writing from the various companies.

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Now, I had no information brought to me before that letter of October 6th was dictated that the Commissioner did not have anything in writing from any of the companies, as a matter of fact, and that as a matter of fact those impressions were unwarranted, I suspected, and without any definite basis. In other words, that the attorneys and the receivers of the railroads had the information—

Q. You thought, in other words, that the attorneys and the receivers of the railroads had the information from the original sources in their pos-

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session which you did not have and, on the other hand, they had made no concessions while through Commissioner Nixon the suggestion was made that concessions had to be made on both sides? A. Yes.

Mr. Matthews: I object to the form of the question. There is too much in it.

Q. I am going to follow along your answer to get one or two additional items, and then I will go back over the ground. Is it a fact then, that you

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did not expect the letter which is complained of in this proceeding to be read aloud, or in public by Commissioner Nixon? A. Mr. Mooney, the last thing on earth that had ever entered my head was that Mr. Nixon would be so foolish as to read that letter to the railroad attorneys that he had to negotiate with.

Q. Now, without throwing into this proceeding any asperities—this is a legal proceeding, and you have referred to the mind of Mr. Nixon, and it is my duty to call from you without unnecessary stricture what you considered his mind to be in this respect? A. Well, I felt that Mr. Nixon was not

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of quick perception of the actual necessities of the situation called, nor of a quick grasp of the verities. I considered that his mind was slow to get the true inwardness of the situation; and in order to bring the thing forcibly into his inner consciousness it was necessary to express the matter with as much vigor and terseness as possible.

Q. I understand from your answer that your mind was particularly sensitive in the sending of your answer and by reason of the fact of his use of the expression "forced"? A. Yes, he indicated that "force" was being applied to him.

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Q. And you did not intend to have any "force" applied to you? A. Not then, nor thereafter.

Q. And you wished to indicate that to him in your letter? A. Exactly, I wanted to indicate that whatever "force," to whatever "force" the Commissioner was succumbing, that so far as I was concerned, I did not intend to proceed upon any other than an unfettered basis.

Q. Well, that is to say, that you resented the suggestion of "force"? A. I don't like to use the word "resented." There was no feeling of resentment. The implication, rather, was that the municipal authorities by one device or another were to be jockeyed or corralled into a position where they were practically without any means of taking care of their official duties.

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Q. Now, is it a fact, from what you have said, that you were not only astonished at his reading the letter in public, but that, in your view, the reading of that letter in public destroyed the very purpose for which it was sent? A. There is no question about it. In the first place, the action of Commissioner Nixon in reading that letter was entirely

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unexpected, and if he had had a moments reflection he would have known it was defeating the very purpose of the letter.

Q. And, from your standpoint, did the reading of the letter in public destroy the purposes of the conference? A. Why, it necessarily had that effect. You would only have to consider what Nixon had said here that these forces were at work, they were the forces in antagonism, and the moment that those—whoever they were—that Nixon said had subjected him to force where he says, "I was prac-
1823 tically forced to call the conference," that they would immediately be disconcerted by anything that upset the action that they had brought about, and as resistance begets resistance, they would exert more force than they ever had before.

Q. In connection with these words, "I was practically forced to call the conference," had it been a subject of discussion by the reporters going back and forth as to whether that conference was called by or under the sanction of the court? A. Well, it was gossip, what we ordinarily in the vernacular call "gossip," to the effect that Commissioner
1824 Nixon's conference was with the sanction of the Court.

Q. But as to the question of "force," the phrase "force," as used in this connection, you didn't understand that had anything to do with any action on the part of the Court, did you? A. No.

Q. Now, when was the letter dictated? A. Before 10:30 Monday morning, October 6th.

Q. Was it dictated to Mr. Van Valkenburg? A. It was.

Q. And after it had been written where was it presented to you for your signature? A. It was

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brought to me in the room that we use for the Committee on Finance and Budget. In other words that is a large reception room in the Comptroller's office where the Committee meets and the office of the Comptroller ordinarily uses for the conduct of business is a room a quarter the size of the court room we are now in, and which adjoins that room.

Q. And when this letter was brought to you was the Committee engaged in other business? A. It was engaged in the business of making up the budget of 1920.

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Q. Had you, between the dictating of the letter and the presentation of it to you for signature, had you been presented with, or had there been submitted to you any first draft or any preliminary striking off of the letter? A. No.

Q. In other words there was no opportunity for revision of the letter? A. Well, I find that I have to do my work in this way. When it is given to the stenographer it is practically in its finished form. If it is changed for any reason it is because of something that has occurred between the dictation and the transcribing, or because of some clerical error, or stenographic error which the stenographer may have made.

1827

Q. Now, this business you had before you that day—you have spoken of the volume and the amount of business—we would like to get its particular significance. Was that on the day the charitable or charity budget of the City of New York was made up? A. We had in the afternoon what is called charitable institutions. In the forenoon we had a number of hearings on matters that, while many of them are not large, they are complicated and, because of the confusion of the law,

1828 or the contradictions in the law, or the conflicts between one office and another, sometimes a small item of a thousand dollars will cause more trouble than an item of one million dollars.

Q. Is it fair to say the letter was written under great pressure? A. It was written under the pressure that was incident to performing the public duties at that particular season of the year. There is great pressure in that office all the time if the work is effectually done.

Q. Well, when this letter was presented to you
1829 for signature, was there anybody present? A. Yes.

Q. Who? A. Why, the Committee was in session, and all of the members of the Board of Estimate and Apportionment are members of that Committee, and they attend, either in person or by the legally authorized substitute, for example a Borough President may be represented by a Commissioner of Public Works, but my recollection is that the full Committee was there that morning, although I think one or two of the Borough Presidents at the time were represented by the Commissioners of Public Works.

1830 Q. Now, was the letter read aloud before it was signed by you? A. When Mr. VanValkenburg brought it in—in the first place, he had to walk clear around the table of the other members to get around to my side to hand it to me. When he brought it in for me to read and sign I said that it was a matter of public question, and affected all of the members of the Board of Estimate and Apportionment—whom I had assumed had received letters af a like tenor to that of October 3rd, and in order to save time, and save my reading it to them, or explaining it to them, I asked VanValken-
burg to read it aloud, while I followed with the

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original, which I had in my hand. He had the carbon, and he read the letter aloud to the entire Committee and all the members of the Board. There was a little brief discussion. There was no dissent by any member from anything that was in the letter, every member of the Board knowing what was in the letter and it was immediately signed and directions were given to transmit it and deliver it by hand forthwith.

Q. And did you then go on with the business on which Committee was engaged? A. Yes. Only for the discussion of the letter—I don't think the whole 1832
discussion extended over a period of two minutes.

Q. Now, I call your attention to that portion of the letter in which you refer to denying access to original sources. Will you, in the first place, tell us what you mean and understand by original sources? A. Well, I meant all of those books, documents, records and memoranda in the possession of the various companies and in their archives that shed light upon the property and affairs of the companies, in whatever manner, shape or form those may be kept.

Q. And you have had considerable information 1833
by experience and knowledge of the ways and means in which the information could either be concealed or exhibited at pleasure? A. I have.

Q. Now, when you used the expression "denied" in that letter, will you please state what you intended and meant by the word denied? A. What I meant to convey to the Commissioner was in having that free and unrestricted access with power to compel any subordinate to produce or dig up whatever it might be, or be suspected of being, all of the facts that related to these different companies, that anything that cut as short of that was

1834 a denial of access to the original sources; and that the very purpose of the application that had been made to the United States District Court for the appointment of a co-receiver was to have someone who was in a position to bring about these disclosures, and the necessary effect of the order denying that application was to deny to the municipal authorities in question that kind of access to the original sources.

Q. And was it that that you meant by denying access to these sources in the letter? A. It was.

1835 Q. As coincident, or corollary of or supplemental to the denial which you say you meant, flowing from the refusal to appoint a co-receiver, did you have in mind the making permanent of the receivership of Mr. Garrison? A. Well, I didn't have that any more in mind than the fact of the refusal to appoint a co-receiver.

Q. There is some reference in your letter to the fact of a "friendly receiver" or "receivers to the liking"—receivers in the plural—now, you knew at that time that Mr. Garrison had been appointed receiver? A. Yes.

1836 Q. And you knew, did you, that Mr. Sheffield had been made Receiver in Bankruptcy? A. Yes.

Q. And you knew, did you, of the fact that Mr. Garrison had been arbitrator on the nomination of the railway companies before his appointment as receiver? A. Yes.

Q. And you knew, did you generally, that the receiver of the railway company, of the Interborough Consolidated Corporation, had been appointed in an insolvent receivership as an incident to a bankruptcy, on the heels of the loan of a vast amount of money made by them the day before? A. Yes.

1837

Q. And that there was a serious question of the propriety of the bankruptcy of that company and the appointment of a receiver thereof? A. Yes.

Q. And did you know then that certain counsel and officials of the railway companies, that is employees and officers, etc., had been retained in the employ of the receivers and were then in the physical possession of the books and papers?

Mr. Mathews: I object to this form of question. I have no objection to his stating what was in his mind, but the question implies their truth. 1838

Mr. Mooney: We have already developed this.

Mr. Caffey: The question implies the truth of the statements contained in it.

Mr. Mooney: I will go over that and give the names.

Q. You knew that Mr. Quackenbush had been retained by the receivers? A. I so understood.

The Court: In what capacity?

Mr. Mooney: Counsel. 1839

Mr. Caffey: If the Court please, I object to the question on the same ground that I objected before. He is implying the truth of the statements contained in the question. He assumes that Mr. Quackenbush had been appointed counsel for the Receiver when there is no evidence of that in the case. If the witness wants to tell what is in his mind, that is a different thing, as explaining his intent.

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The Court: I think that is a perfectly sound distinction, that the witness can tell what was in his mind. The witness can tell what was in his mind, what he understood.

Mr. Mooney: I am very much gratified to have the learned District Attorney put my question for me, and I appreciate his kindness.

Q. So I will ask you what you had in your mind in regard to those persons in possession of the
1841 original sources of information, of course, dealing with individuals, now, you understand? A. Well, I will have to go back just a step to answer that question. You made a reference to friendly receiverships. I know that these were friendly receiverships in the ordinarily accepted use of that term, in that the complaint and answer comes in at the same time and everything goes forward in the usual manner, in what are known as friendly receiverships. I knew, also, that the appointment, of course, of the receiver had not changed the personnel of those who actually performed the duties
1842 and had charge of the records and properties of those various companies. My recollection is that it had changed it in not more than one particular, and I have information to the effect that even that particular was misleading as to the case of the particular individual, so that, so far as original sources of information were concerned, they were in exactly the same position as they were before the receivers were appointed, and in the hands of the same set of subordinates, officers and employees connected with the various traction companies and that they had been so continued in their respective

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duties by the Receivers. I don't know whether that answers your question.

Q. Well, it is deodorized by reason of the objection of the District Attorney. But even thus deodorized, I think it answers the question. Now, did you have in mind that one of the persons thus referred to by you on a public occasion had endeavored to prevent and announced his intention to prevent access to original sources of information? A. Yes.

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Mr. Mathews: I understand your (Mr. Mooney's) question was as to his mind on that day?

Mr. Mooney: Naturally.

Q. And that had taken place, the incident to which you have just referred, in the course of a proceeding which was designed for the purpose of eliciting information in which the public of the City of New York was interested? A. Yes. And I had in mind another thing, that I have been in some receiverships where it was with the greatest difficulty that those having interests adverse to the interests procuring the appointment of the Receiver have been able to obtain any access to original records. I recall an instance where the records have been removed from the jurisdiction of the Court by or through employees continued by the Receiver after the receivership. I had in mind that condition also.

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Q. Now, Mr. Craig, will you tell us— A. I had in mind also information that had come to me in one way or another, remotely and recently, with the respect to the transactions of these different

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companies, which no human being would ever suppose for a minute would be voluntarily disclosed by anyone identified with the company.

Q. And did you know that when you wrote this letter that information had actually been withheld even under public pressure? A. Yes, I knew that.

Q. And had been withheld even when the person had been subjected to an oath? A. Yes, I knew more than that. I knew that information of that character had been falsified by the persons in possession of the records.

1847

By the Court:

Q. Does that relate to a time during or prior— A. It relates to a time anterior to these receiverships.

By Mr. Mooney:

Q. Now, did you know, that in other instances, the books of these very railways under consideration, had been sold in great quantities to junk men for the purpose of reducing them to pulp, and that they had been reduced to pulp? A. Well, I happened to be associated with some of the lawyers who were in the litigation, whose clients were adversely affected by the destruction of those books. I had known that for a great many years.

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Q. That was a matter of public scandal and notoriety?

The Court: I think the matter referred to is a matter of almost common knowledge. Show that the matter referred to by the witness was prior to the receivership.

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Q. The fact to which you have referred was prior to the receivership, the actual fact itself? A. Yes.

Q. But the individuals were still alive and are in possession of the books, in many instances, weren't they?

Mr. Mathews: I object.

The Court: Objection sustained.

Mr. Mooney: I think that is a dangerous ruling, but if your Honor appreciates it—

The Court: You may ask the witness the names of the persons.

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Mr. Mooney: I have the very best evidence of that, that is the reason I have offered these proceedings.

The Court: The point is what information he had. I don't mean direct knowledge, but what he believes to be the fact, as to any given persons having knowledge of the case. And the objection is sustained, because the question is so phrased that it involves many other things.

A. May I volunteer one thing in regard to companies not involved in these receiverships of which think you probably have no knowledge: I also ad in mind in relation to the records other ompanies.

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Mr. Caffey: That is immaterial, if the Court please.

The Court: I will take it.

A. For instance, in the case of Richmond County mediately prior to the consolidation the original records available to the public authorities down

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there were destroyed, some of them by fire, and we have to-day such fragments as we have, still bearing the traces of fire, and the real originals as were left in the franchise holding companies.

Mr. Caffey: I move to strike that out.

Q. Was that in your mind? A. That was in my mind, yes, sir.

Q. And did you have in mind that fire was commonly attributed to incendiary origin? A. I have

1853 always understood so, that it was.

Q. Did you have in mind that no statement with respect to the financial affairs of these companies, or the amounts paid out, or expended in construction, improvements, betterments or otherwise could be ascertained at the time of the receivership, except by access to original sources, other than the books of the company?

Mr. Caffey: I object to that as incompetent. It calls for a conclusion and the witness does not state, nor is he asked what his state of mind was.

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Mr. Mooney: I intended to. But I will draw out the facts.

Q. Did you know, or did you have in mind the receivership of the New York City Railways Company which was administtred by Judge LaCombe —the Metropolitan Street Railway Company—excuse me, the New York Street Railway Company, which was administered by Judge LaCombe?

Mr. Caffey: I object to that on the same ground and also on the ground that it is immaterial.

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The Court: Objection overruled.

Mr. Caffey: I would like to be heard a moment on that. Each of these questions is being so phrased that the record may read as if the witness had testified that all of these are facts, whereas we are only concerned in—the competent fact here is what was his state of mind when he wrote the letter, not whether this is true or untrue, the only question being whether that was in his mind, and in that light to interpret his act.

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The Court: I understand. The record will show that it was merely to disclose what was in the mind of the witness when he wrote the letter of October 6th.

Mr. Caffey: I have no objection to that.

The Court: The question now addressed to him is whether the witness had in mind the New York City Railway Company receivership which was administered in the United States Circuit Court originally under the then Judge LaCombe.

Mr. Mooney: I offer for identification a certified copy of Judge LaCombe's memorandum in that receivership touching the question of the books. Just for identification now.

1857

Marked "For Identification, Defendant's Exhibit P."

A. What I understand by your question is whether I knew or had in mind, whether I was familiar, generally, with this—

Q. The incidents of that case— A. As distin-

1858

guished from the fact that I recalled then and paraded them before my mind at that particular moment. I can't say that I did canvas that, or have that in my mind at that particular moment, but I was familiar with them and no doubt it had been given proper weight in the conclusions I had reached. In that sense I had it in my mind.

Q. That answers my question.

Mr. Caffey: I object to that as utterly immaterial.

1859 The Court: I will let the answer stand.

Q. And, were you familiar in the way that you have described, with the opinion and direction of Judge LaCombe to the Receiver handling the receivership on the subject of books, papers and information, which I now hand you? A. I was.

Mr. Mooney: This paper has been marked for Identification as Defendant's Exhibit P. I now offer it in evidence.

Mr. Caffey: I object to it as immaterial and incompetent.

1860 The Court: Objection sustained.

Mr. Mooney: I accept.

Q. At the time you wrote the letter did you know that, notwithstanding that direction of Judge LaCombe's, that the public had failed through their proper representatives to obtain the information covered by that memorandum?

Mr. Caffey: I objection to that as immaterial.

The Court: Objection is sustained.